

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 431.

THE PUSEY AND JONES COMPANY, PETITIONER,

vs.

HANS KARLUF HANSSEN.

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT.**

PETITION FOR CERTIORARI FILED JUNE 14, 1922.

CERTIORARI AND RETURN FILED DECEMBER 26, 1922.

(28,981)



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In the United States Circuit Court of Appeals for the Third
Circuit, October Term, 1921.

No. 2780.

THE PUSEY AND JONES COMPANY, Respondent-Appellant,

vs.

HANS KARLUF HANSEN, Complainant-Appellee.

MOTION TO DISMISS.

[Filed Oct. 3, 1921.]

And now comes the said Hans Karluf Hansen, appellee, by his solicitors, and moves the court to dismiss the appeal herein, on the following grounds:

First. For that the order or decree "entered on the first day of August, 1921, in the above entitled cause," from which appellant attempts to take its appeal, is not a final order or decree, and no appeal lay therefrom.

Second. For that the said order or decree of August 1, 1921, is not an interlocutory order or decree appointing a receiver upon a hearing in equity from which an appeal may be taken to this court; and is not an interlocutory order or decree upon a hearing in equity from which any appeal may be taken to this court.

Third. For that the attempted appeal herein was not taken within thirty days from the entry of any interlocutory order or decree made by the court below appointing a receiver herein upon a *hearing* in equity.

Fourth. For that assignment of error numbered "11" does not set out particularly any error which the appellant asserts and intends to urge as error committed by the court below in entering the order or decree of August 1, 1921, attempted to be appealed from herein, and should be disregarded.

Fifth. For that the said assignment of error numbered "11" is uncertain and insufficient and not made in accordance with Section 997 of the Revised Statutes of the United States and Rule 11 of this Court, and should be disregarded.

Sixth. For that the assignments of error filed herein are not a compliance with Section 997 of the Revised Statutes of the United States and Rule 11 of this Court, and should be disregarded.

Seventh. For that this Court is without jurisdiction to entertain said appeal.

October 3, 1921. John P. Nields, Wm. G. Mahaffey, Wm. H. Button, Solicitors for Appellee.

[Endorsement omitted.]

[Title Omitted.]

DOCKET ENTRIES.

- June 9, 1921. Bill of complaint with Exhibits "A," "B," "C," "D," "E," "F" and "G" annexed, filed; same day subpoena issued, returnable June 29, 1921
- " " " Motion of complainant for appointment of receiver, filed; same day order appointing Willard Saulsbury and Charles B. Evans receivers, bond to be given by receivers in the sum of \$50,000, and by complainant for costs in the sum of \$10,000; that defendant show cause on or before June 18, 1921, at 10 o'clock A. M., why receivers should not be continued, etc.; that complainant file affidavits on or before June 14, 1921; that defendant file its affidavits on or before June 17, 1921; that complainant file reply affidavits on or before June 18, 1921; and that Marshal serve copy of order on defendant company; same day said order filed. (Exit copy to Marshal.)
- " " " Order approving bond of Receivers in the sum of \$50,000 with National Surety Company as surety; same day said bond filed.
- " 11, " Marshal returns on subpoena "Served," etc.; same day writ filed.
- " " " Marshal returns on copy of order appointing receivers, "Served," etc.; same day copy filed.
- " " " Defendant appears by Robert Penington, Esq., and George N. Davis, Esq., its solicitors; same day praecipe filed.
- " " " Motion of defendant for order vacating order appointing receivers filed.
- " 13, " Order approving bond of complainant for costs in the sum of \$10,000, with United States Fidelity & Guaranty Company as surety, same day said bond filed.
- " " " Affidavit of William G. Coxe and Lawrence Leonard, with exhibit annexed, filed by defendant.
- 3 " " " United States Shipping Board Emergency Fleet Corporation moves the court for leave to file petition of intervention; same day, with leave of court, motion withdrawn and abandoned.
- " " " Hearing on motion of defendant for order vacating order appointing receivers; same day order denying said motion.
- " " " Order continuing until June 20, 1921, hearing on rule to show cause why receivers should not be con-

tinued, plaintiff's affidavits to be filed on or before June 15, 1921; defendant's affidavits on or before June 18, 1921; and plaintiff's affidavits in reply on or before June 20, 1921.

- June 15, 1921. Affidavits of John J. Mason and F. W. G. Unger Vetlesen on behalf of complainant and stipulation of counsel, filed.
- " 18, " Answer of defendant, filed.
- " " " Affidavits of Charles Stewart Lee, Robert Penington, George N. Davis, Charles Kimmich, Chester N. Farr, Jr., Frederic D. McKenney, Hartwell Cabell, William G. Coxe, 2d of William G. Coxe, Clarence B. Lynch, 2d of Clarence B. Lynch, 3d of Clarence B. Lynch, Holden A. Evans, George Weems Williams, William A. Glasgow, Jr., R. J. Cannon, Lawrence Leonard, Henry A. Wise, James Bayard Simpson and Carl Ericson, with exhibits thereto annexed, filed on behalf of defendant.
- 4 June 20, 1921. Affidavits of John J. Mason, F. W. G. Unger Vetlesen and Hans Karluf Hanssen, with exhibits thereto annexed, and power of attorney, filed on behalf of complainant in reply.
- " " " Hearing on rule to show cause why receivers should not be continued.
- " " " Motion of complainant for leave to amend bill of complaint, filed.
- July 6, 1921. Order granting leave to file petition of intervention of Jacob Prebensen, Jr., et al., objections thereto to be filed within ten days; same day said petition and order filed.
- " 7, " Petition of receivers, filed; same day order that receivers pay certain bills, etc.; same day said order filed.
- " 16, " Objections by defendant to petition of intervention of Jacob Prebensen, Jr., et al., filed.
- " 21, " Opinion of Court, filed.
- " 23, " Petition of receivers, with affidavit of Clarence B. Lynch and exhibits annexed, filed; same day order directing receivers to appear in U. S. District Court for Southern District of New York and make defense to Involuntary Petition in bankruptcy, etc.; same day said order filed.
- " " " Order granting complainant leave to abandon motion for leave to amend bill of complaint as set forth in paragraph "2" of motion.
- 5 " 29, " Order granting complainant leave to amend bill, etc.; same day said order filed.
- " " " Petition of receivers, filed; same day order setting same down for hearing tomorrow at 9.30 o'clock A. M.

- July 30, 1921. Order authorizing receivers to collect outstanding debts, etc.; same day said order filed.
- " " " Petition of receivers, with exhibits annexed, filed; same day order directing receivers to appear in U. S. District Court for the Southern District of New York and make defense, etc., to voluntary petition in bankruptcy, etc.; same day said order filed.
- Aug. 1, 1921. Decree confirming appointment of receivers, etc.; same day said decree filed. (Exit copy to solicitors.)
- " 22, " Petition of defendant for appeal with assignments of error, filed; same day order allowing appeal, bond to be given by defendant in the sum of \$500; same day said order filed.
- " 27, " Order approving defendant's bond on appeal in the sum of \$500, with National Surety Company as surety; same day said bond filed.
- " 31, " Citation issued.
- Sept. 1, " Citation with acceptance of service by solicitor for complainant endorsed thereon, filed.
- " " " Præcipe of defendant for transcript of record on appeal, filed.

[Title omitted.]

BILL OF COMPLAINT.

[Filed June 9, 1921.]

To the Honorable the Judge of the District Court of the United States for the District of Delaware:

The complainant, Hans Karluf Hanssen, a subject of the King of Norway, a citizen of the Kingdom of Norway and a resident of Haugesund, Norway, brings this his bill, on behalf of himself and of all other stockholders and creditors of The Pusey and Jones Company, respondent, who may contribute to the expense hereof and become parties to this suit, against The Pusey and Jones Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, a citizen and inhabitant of said State; and thereupon the complainant complains and says:

1. The complainant, Hans Karluf Hanssen now is, and at the time of the happening of the grievances herein set forth was, a subject of the King of Norway, a citizen of the Kingdom of Norway and a resident of Haugesund, Norway.

7 2. The respondent, The Pusey and Jones Company, is a corporation organized and existing under the laws of the State of Delaware, formed by the consolidation or merger of The Pusey and Jones Company, Pennsylvania Ship Building Company and New Jersey Ship Building Company, all corporations organized under the laws of the State of Delaware, under an agreement of con-

solidation and merger, dated December 27, 1917, and recorded in the office for the recording of deeds, etc., in and for New Castle County in said State, in Certificate of Incorporation Record X, Volume 8, Page 524. The said respondent has its principal office or place of business in said City of Wilmington in the said District and State of Delaware, where a plant and yard for building ships has been operated by a corporation bearing the name of The Pusey and Jones Company for upwards of forty years.

That said The Pusey and Jones Company, New Jersey Ship Building Company and Pennsylvania Ship Building Company, prior to January 24, 1918, were engaged in building commandeered ships at their plants at Wilmington, Delaware and Gloucester, New Jersey. That on and after the last named date, when they were merged and consolidated into a single corporation under the name and title of "The Pusey and Jones Company," said business of building commandeered ships at the said plants was thereafter conducted by the respondent. That the respondent since said date of consolidation has been and still is the owner of two tracts of land together with the buildings thereon erected and the fixtures, tools, and machinery belonging thereto, one situate at Wilmington, Delaware, and the other at Gloucester, New Jersey.

3. The said respondent has an authorized capital stock of twenty million dollars (\$20,000,000) divided into two hundred thousand shares (200,000) shares of the par value of one hundred dollars (\$100) each, of which capital stock one hundred thousand shares (100,000) of the par value of one hundred dollars (\$100) each, aggregating ten million dollars (\$10,000,000) is eight per cent cumulative preferred stock, carrying quarterly dividends payable on the first day of January, April, July and October in each year, is redeemable on July first, nineteen hundred and eighteen, or at any regular quarterly dividend period thereafter, at one hundred and one dollars and fifty cents (\$101.50) per share, and is preferred, both as to dividends and in liquidation, to the common stock of the said company. That the said preferred stock has no voting power, excepting upon the question of increasing the authorized preferred stock and the placing of a mortgage on the property of the said company.

That the said company has also an authorized common stock of one hundred thousand shares (100,000) of the par value of one hundred dollars (\$100) each, aggregating the sum of ten millions of dollars (\$10,000,000).

4. That upon information and belief this complainant avers that the total capital stock issued and outstanding of the respondent company consists of four thousand shares (4,000) of the common stock, of the par value of one hundred dollars (\$100) per share, and of forty-two thousand two hundred (42,200) shares of preferred stock, of the par value of one hundred dollars (\$100) per share, making a total outstanding capital stock at par of four million six hundred twenty thousand dollars (\$4,620,000) of which four hundred thousand dollars (\$400,000) is common stock and four million two hun-

dred twenty thousand dollars (\$4,220,000) is preferred stock.

9 That of said stock so issued and outstanding three thousand eight hundred and fifty (3,850) shares of the common stock and twenty thousand (20,000) shares of the preferred stock is now, and ever since February 11, 1920, has been, held by Baltimore Dry Docks & Ship Building Company, a corporation of the State of Maryland; that fifteen thousand (15,000) shares of the said preferred stock were on May 20, 1920, assigned and transferred to Den Norske Handelsbank, of Christiania, Norway, and are now held by John A. Hurley; that seven thousand two hundred (7,200) shares of the said preferred stock were on or about February 13, 1920, sold, assigned and transferred to complainant and ever since said date have been and now are held by complainant.

5. That in the year 1918, The Pusey and Jones Company, respondent, for good and valuable consideration, issued and delivered certificates Nos. A-4, A-10 and A-18, representing in the aggregate seventy-two hundred (7,200) shares of its preferred capital stock, as follows:

Certificate No. A-4 for five thousand shares (5,000) unto Christoffer Hannevig, Inc.

Certificate No. A-10 for two thousand (2,000) shares unto Christoffer Hannevig, Inc.

Certificate No. A-18 for two hundred (200) shares unto Christoffer Hannevig.

That each of the said certificates, together with all of the stock represented thereby was on or about February 13, 1920, duly sold, assigned, transferred and delivered by the lawful holder or holders thereof, endorsed in blank, unto complainant, which said shares of stock then and there became the property of complainant who is now the holder thereof, copies of which certificates are annexed hereto marked "Exhibit A"; and complainant prays that the originals thereof when produced at the hearing of this cause may be taken as part of this bill of complaint.

10 6. That complainant on or about the sixth day of June, 1921, made demand in person and by letter upon the said The Pusey and Jones Company, respondent, to have the stock represented by said certificates Nos. A-4, A-10 and A-18 transferred on its books to complainant and that a new certificate be delivered to him; that annexed hereto is a true copy of said letter setting forth said demand, marked "Exhibit B," which complainant prays may be taken as part of this bill of complaint. That The Pusey and Jones Company, respondent, contrary to the rights of complainant then and there declined and ever since has neglected to issue the certificate or certificates of the said stock to complainant.

7. That complainant also is a creditor of the said The Pusey and Jones Company, respondent, in the sum of Six Hundred Fifty Thousand Dollars (650,000) with interest thereon, all of which indebtedness is now due and payable and is represented by nine promissory notes of said The Pusey and Jones Company assigned, transferred and delivered on or about February 13, 1920, for good and valuable

consideration, whereby your complainant became and ever since has been the lawful holder thereof and which said notes are as follows:

First. Note dated July 27, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent (5%).

11 Second. Note dated August 1, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Third. Note dated August 16, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Fourth. Note dated August 23, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Twenty-five Thousand Dollars (\$25,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Fifth. Note dated August 29, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Twenty-five Thousand Dollars (\$25,000), payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Sixth. Note dated August 31, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Twenty-five Thousand Dollars (\$25,000), payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

12 Seventh. Note dated September 13, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Seventy-five Thousand Dollars (\$75,000), payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Eighth. Note dated September 27, 1917, made by The Pusey and Jones Company, to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable three months after date, at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Ninth. Note dated October 1, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, for the sum of Three Hundred Thousand Dollars (\$300,000), payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

That complainant annexes hereto true copies of said notes, marked "Exhibit C," and prays that the originals thereof when produced at the hearing of this cause may be taken as part of this bill of complaint.

8. That the complainant on or about the sixth day of June, 1921, presented each and all of the said promissory notes to Delaware Trust Company, at its banking house in the city of Wilmington, Delaware, and to The Pusey and Jones Company, at its principal office in the city of Wilmington, Delaware, and made demand for payment of said sum of six hundred fifty thousand dollars (\$650,000), with interest thereon, represented by said nine promissory notes of the said respondent, recited in paragraph 7 of this bill of complaint; and

complainant annexes hereto a true copy of his letter to Delaware Trust Company, setting forth said demand, marked "Exhibit D," and prays that the original when produced at the trial of this cause may be taken as part of this bill of complaint. That said Delaware Trust Company declined and refused payment of said sum of six hundred fifty thousand dollars (\$650,000), with interest thereon, and any part thereof represented by said nine promissory notes, and said respondent also neglected and refused payment of said sum of six hundred fifty thousand dollars (\$650,000), with interest thereon, and any part thereof represented by said nine promissory notes, and still neglects and refuses to make payment thereof.

9. That paragraph 3883 of the Revised Code of Delaware of 1915, provides as follows:

"Whenever a corporation shall be insolvent, the Chancellor, on the application and for the benefit of any creditor or stockholder thereof, may, at any time, in his discretion, appoint one or more persons to be receivers of and for such corporations, to take charge of the estate, effects, business and affairs thereof, and to collect the outstanding debts, claims, and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by such corporation and may be necessary and proper; the powers of such receivers to be such and continued so long as the Chancellor shall think necessary; provided, however, that the provisions of this section shall not apply to corporations for public improvement."

That said respondent is not a corporation for public improvement.

14 10. That The Pusey and Jones Company, the respondent, is insolvent in that it is unable to pay its obligations as they fall due, in the due course of business.

11. That on March 22, 1921, at the suit of Baltimore Dry Docks & Ship Building Company against The Pusey and Jones Company, respondent, in the District Court of the United States for the District of Delaware, a judgment was recovered in favor of the said Baltimore Dry Docks & Ship Building Company and against The Pusey and Jones Company, respondent herein, in the sum of eight hundred thousand one hundred twenty-five dollars (\$800,125), besides costs of suit, no part of which judgment, with accrued interest thereon, has been paid, and the same now remains open and unsatisfied of record in said court. That no execution has been issued on said judgment by reason of a certain illegal and improper agree-

ment entered into between the plaintiff in said judgment and the respondent herein, with others, on March 18, 1921, wherein it was agreed, among other things, "that no execution will be issued or levied on said judgment for the period of six months from the date of entry thereof."

That on August 2, 1918, the respondent herein executed its bond in favor of the United States Shipping Board Emergency Fleet Corporation in the amount of five million dollars (\$5,000,000), conditioned for the payment of principal and interest on the same at the rate of five per cent. (5%) per annum, payable semi-annually, as therein more particularly recited, and the respondent on the same day and year executed and delivered to the said United States Shipping Board Emergency Fleet Corporation its mortgage to secure payment of said bond, covering the plants and property of the respondent situate in the States and districts of Delaware and New Jersey, as set forth and described in said mortgage recorded in the office of the Recorder of Deeds in and for New Castle County in Mortgage Record F, Volume 16, page 44, and in the office for the recording of mortgages in Camden County, in the State and district of New Jersey, and complainant prays that the records of said mortgage or a duly certified copy thereof when produced at the hearing of this cause may be taken as part of this bill of complaint. That no payment of interest and no payment on account of the principal debt of said bond secured by said mortgage has been made by the respondent herein, but said debt and all accrued interest thereon still remains due and unpaid. And further, that any and all indebtedness of the respondent herein to the United States Shipping Board Emergency Fleet Corporation secured by said bond and mortgage, with all accrued interest thereon, remains due and wholly unpaid, which debt and interest now due and payable from the respondent upon information and belief, this complainant avers exceeds the amount of six million dollars (\$6,000,000).

That in the Circuit Court of Camden County in the State of New Jersey, there are now pending numerous suits against The Pusey and Jones Company, respondent, among which is a mechanic's lien suit of George F. Pawling & Co., against Lewis Roth, builders, and The Pusey and Jones Company, owner, for the recovery of forty thousand eight hundred thirty-three dollars and sixty-five cents (\$40,833.65).

That by reason of piece-meal sales under the judgment, mortgage and suits aforesaid, there will be a great wasting of the assets of said respondent and an unequal and wholly inequitable application of the assets of the respondent company to its debts.

16 12. On information and belief complainant further avers that heretofore, on or about August 3, 1917, the three companies merged into the respondent, as aforesaid, were committed to a ship construction program of thirty-four vessels of the aggregate of two hundred fifty-two thousand nine hundred (252,900) deadweight tons. That by virtue of an Act of Congress, approved June 15, 1917, and Executive Order of the President of the United States, dated June 11, 1917, the three companies aforesaid were directed by the United States Shipping Board Emergency Fleet Corporation, through

its requisitioning orders issued between August 1, 1917, and November 1, 1917, to discontinue ship construction for private account and to continue such work of construction for account of the United States Shipping Board Emergency Fleet Corporation, upon such terms of just compensation as should thereafter be determined pursuant to law. That on January 24, 1918, said three corporations were consolidated into the respondent company, and respondent assumed all contracts and relationships existing between said three companies and the said United States Shipping Board Emergency Fleet Corporation.

That thereafter the United States Shipping Board Emergency Fleet Corporation advanced to the respondent company (or its predecessor companies) for plant and ship construction and other purposes large sums of money, exceeding five million dollars (\$5,000,000), secured or partly secured by the mortgage hereinbefore mentioned. That the respondent was further directed by the said United States Shipping Board Emergency Fleet Corporation to complete the construction of the said vessels and prosecute the work thereon with all practical despatch.

That the respondent built and constructed the vessels covered by the requisitioning aforesaid and fully completed the same on or about the month of July, 1920. Thereafter the respondent claimed and still claims that by reason thereof the said United States Shipping Board Emergency Fleet Corporation became and is indebted to the respondent in a large sum of money, the exact amount of which is unknown to complainant.

That the said United States Shipping Board Emergency Fleet Corporation has refused and still refuses to recognize the validity of the said indebtedness claimed by the respondent company and has asserted and still asserts that upon a proper adjustment and settlement of the mutual accounts existing between respondent and the said United States Shipping Board Emergency Fleet Corporation, there now exists an indebtedness of a large sum of money, to wit, the sum of five million dollars (\$5,000,000), from the respondent to the said United States Shipping Board Emergency Fleet Corporation over and above any sum or sums of money that may be due to the respondent by reason of any contracts or other relations heretofore and now existing, as is shown by a memorandum of the United States Shipping Board Emergency Fleet Corporation, copy of which is annexed hereto and marked "Exhibit E."

13. On information and belief complainant further avers that between February 11, 1921, and March 18, 1921, numerous conferences were held by certain of the creditors, stockholders and representatives of the respondent and creditors and representatives of Christoffer Hannevig, a bankrupt and president or former president of the respondent herein. Four days before the trial and entry of the judgment in the suit of the Baltimore Dry Docks & Ship Building Company against the respondent hereinbefore recited, to wit, on March 18, 1921, as a result of the conferences aforesaid, an agreement was entered into wherein five directors were named as the governing body of the respondent in violation

of the rights of the other stockholders and contrary to the interests of the other creditors of respondent. That annexed hereto, marked "Exhibit F," is a true copy of said agreement which complainant prays may be taken as part of this bill of complaint.

14. On information and belief, the complainant further avers that in February, 1920, Christoffer Hannevig, the president of The Pusey and Jones Company, being pressed by creditors in this country and abroad and being in dire straits for funds, applied for financial assistance to said Baltimore Dry Docks & Ship Building Company, with which company he had had business and financial relations. As a result of negotiations, said Christoffer Hannevig signed a contract in the name of The Pusey and Jones Company with said Baltimore Dry Docks and Ship Building Company, dated February 11, 1920, for the sale of the Gloucester plant, consisting of two-thirds of the property and assets of The Pusey and Jones Company, for four million two hundred thousand dollars (\$4,200,000), a copy of which contract is hereto annexed, marked "Exhibit G." That said Christoffer Hannevig, delivered to said Baltimore Dry Docks & Ship Building Company twenty thousand (20,000) shares of the preferred capital stock and three thousand eight hundred and fifty (3,850) shares of the common capital stock of The Pusey and Jones Company to secure the return of said seven hundred and fifty thousand dollars (\$750,000) in the event said The Pusey and Jones Company did not fully perform said contract, which said capital stock is still held by Baltimore Dry Docks & Ship Building Company. That the sole purpose of the said Christoffer Hannevig in signing said contract was to obtain funds under his personal control to satisfy his personal obligations which had no relation to The Pusey and Jones Company and that this fact was well known to the said Baltimore Dry Docks & Ship Building Company.

That the check for seven hundred and fifty thousand dollars (\$750,000) was delivered personally to the said Christoffer Hannevig by the said Baltimore Dry Docks & Ship Building Company; that neither the said check nor the proceeds thereof ever came within the power, disposition or control of the said The Pusey and Jones Company, but were appropriated by the said Christoffer Hannevig to his own use; that at the time of the delivery of the said check the treasurer of The Pusey and Jones Company was one Lawrence Leonard, who had been placed in said office at the instance of the United States Shipping Board Emergency Fleet Corporation in order that he might see that no funds of The Pusey and Jones Company were paid out except upon his approval; that the said check for seven hundred and fifty thousand dollars (\$750,000) was never delivered to the said Lawrence Leonard and was never deposited in any of the accounts of The Pusey and Jones Company controlled by him.

That thereafter, to wit, September 9, 1920, the said Baltimore Dry Docks & Ship Building Company instituted a suit in the District Court of the United States for the District of Delaware against the said The Pusey and Jones Company to recover said sum of seven

hundred and fifty thousand dollars (\$750,000), besides interest and costs. Complainant avers that since said contract was entered into with full knowledge on the part of the said Baltimore Dry Docks & Ship Building Company that it was a device on the part of the said Christoffer Hannevig to afford him an opportunity to appropriate the amount of the said check for seven hundred and fifty thousand dollars (\$750,000) to his own use and to defraud the stockholders and creditors of the said The Pusey and Jones Company, and since the said Baltimore Dry Docks & Ship Building Company knew that said plan had been consummated and that the said Christoffer Hannevig had fraudulently appropriated said money to his own use, there was no liability on the part of the said The Pusey and Jones Company to return said sum to the said Baltimore Dry Docks & Ship Building Company and that the said facts when properly pleaded would have been a perfect defense in said suit.

That the judgment of eight hundred thousand one hundred twenty-five dollars (\$800,125), with costs, referred to in paragraph 11 of this bill of complaint, was illegally and unlawfully suffered to be entered in an action of covenant brought by the said Baltimore Dry Docks & Ship Building Company against The Pusey and Jones Company, the respondent herein, being No. 6 to the September Term, 1920, in the District Court of the United States for the District of Delaware; that the said action of covenant was based on the alleged breach of said contract dated February 11, 1920, hereinbefore mentioned. That the alleged breach of contract was the failure of the respondent to return to the said Baltimore Dry Docks & Ship Building Company the said sum of seven hundred and fifty thousand dollars (\$750,000) alleged to have been received by it from the said Baltimore Dry Docks & Ship Building Company under the terms of said contract. That in fact, as hereinbefore stated, the said sum of seven hundred and fifty thousand dollars (\$750,000) was never paid by the said Baltimore Dry Docks & Ship Building Company to the said respondent, but was turned over to the said Christoffer Hannevig by the said Baltimore Dry Docks & Ship Building Company; that the said Christoffer Hannevig intended at the time he obtained the said check for seven hundred and fifty thousand dollars (\$750,000) from the said Baltimore Dry Docks & Ship Building Company to appropriate the same to his own use and did immediately upon the receipt of said sum so appropriate it.

15. That in equity and good conscience one or more receivers of this court should be appointed for said The Pusey and Jones Company, respondent herein, to apply to this court by petition, motion or other appropriate proceeding, at the present March Term of this court to set aside said judgment of eight hundred thousand one hundred twenty-five dollars (\$800,125), besides costs, in favor of the Baltimore Dry Docks & Ship Building Company against said The Pusey and Jones Company and for leave to plead and to make defense on behalf of the said The Pusey and Jones Company and all other persons lawfully interested in said action.

16. Upon information and belief, complainant further avers that four of the five members of the board of directors of the respondent, at the time the said judgment for eight hundred thousand and one hundred twenty-five dollars (\$800,125), with costs, was entered to be entered against the respondent herein, were parties to the illegal and unlawful entry thereof, and that by reason of the interest of the majority of the directors aforesaid and their manifest purpose to serve interests other than the interests of the respondent any effort to persuade the respondent to remedy the wrong which was perpetrated upon the respondent would be futile and unavailable.

17. The matters in controversy herein exceed, exclusive of interest and costs, the sum or value of three thousand dollars (\$3,000).

In consideration whereof, and for as much as the complainant is remediless in the premises by the strict rules of common law and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable, and to the end that the said complainant may have such relief as in law and justice he may be entitled to receive, humbly prays this Honorable Court:

(a) That the respondent answer this bill, but not under oath, an answer under oath being hereby waived.

(b) That the court appoint one or more persons to be temporary receiver or receivers of and for the respondent corporation, and thereafter continued and made permanent, to take charge of the estate, effects, business and affairs thereof, to collect the outstanding debts, claims and property due and belonging to the respondent, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under him or them, and to do all other acts which might be done by such corporation and may be necessary and proper, with such further powers as the Court shall deem necessary and proper.

(c) That the respondent, its directors, officers, agents, attorneys, servants and employees, be, pending this bill and on final hearing, perpetually enjoined and restrained from conducting any of the business of the defendant, and from receiving and collecting any money due it or from taking any of its property or assets, or from taking part in or in any manner interfering with the business of the defendant.

(d) That the respondent, its directors, officers, agents, attorneys, servants and employees, be ordered and directed to deliver unto said receiver or receivers all property of every kind and nature, and all books of account, papers and documents belonging to or in anywise pertaining to the respondent or its business.

(e) That said respondent may be decreed by this Honorable Court to execute and deliver unto the complainant a certificate or certificates for seven thousand two hundred (7,200) shares of the preferred stock of the said The Pusey and Jones Company.

(f) That the said receiver or receivers be authorized and directed to forthwith proceed by petition, motion, suit or otherwise according to law to vacate and set aside the said judgment alleged in the bill

of complaint herein to have been suffered to be entered in favor of the Baltimore Dry Docks and Ship Building Company against the said The Pusey and Jones Company, and make all proper defense to the action wherein the said judgment was obtained.

(g) That such other, further and general relief be granted to complainant as the nature of the case may require and to equity may seem meet.

(h) That a subpoena issue to the defendant.

And complainant will ever pray, etc. (Sgd.) H. Karluf Hanssen.
(Sgd.) John P. Nields, Solicitor for Complainant.

24 STATE OF DELAWARE,
 County of New Castle, ss:

Hans Karluf Hanssen, being duly sworn, deposes and says: That he is the complainant mentioned in the foregoing bill of complaint; that he has read the said bill and knows the contents thereof; that the allegations therein contained, so far as they relate to his own act, are true, and so far as they relate to the act of others he believes them to be true. (Sgd.) H. Karluf Hanssen.

Subscribed and sworn to before me this ninth day of June, A. D. 1921. (Sgd.) Clarence Southerland, Notary Public. (Seal.)

(Here follows Exhibit A, stock certificates, marked pages 25, 26, 27, 28, 29, and 30.)

31 & 32

EXHIBIT "B."

June 3, 1921.

The Pusey and Jones Company, Corner Front & Poplar Streets,
Wilmington, Delaware.

GENTLEMEN: The bearer of this letter, Mr. Hans Karluf Hanssen, the lawful owner and holder of the following shares of your preferred capital stock, represented by certificates No. A-4, for five thousand shares, issued to Christoffer Hannevig, Inc. and endorsed by it in blank; certificate No. A-10 for two thousand shares, issued to Christoffer Hannevig, Inc. and endorsed by it in blank; and certificate No. A-18 for two hundred shares, issued to Christoffer Hannevig, and endorsed by him in blank, herewith presents the same to an executive officer of your company, and makes formal demand that the said shares be transferred on the books of your company to the said Hans Karluf Hanssen and that a new certificate for seven thousand two hundred shares of said preferred stock of your company be issued in the name of said Hans Karluf Hanssen and delivered to him. He further represents that upon such issuance and delivery he will surrender to your company the certificates above recited and now in his possession.



INCORPORATED UNDER THE LAWS

OF THE STATE OF DELAWARE

THE PUSEY AND JONES COMPANY
SHARES \$100 EACH



This is to certify that *Christoffer Hammerig, Inc.*

fully paid and non-assessable shares in the Preferred Capital Stock of The Pusey and Jones Company, ascertainable only on the books of the Company, in person or by attorney, upon surrender of this certificate properly endorsed. The holders of Preferred Stock shall be entitled to receive when and as declared out of the surplus or net earnings of the Company available for dividends, a fixed cumulative dividend at the rate of six percent per annum payable quarterly on the first days of January, April, July, and October, which dividends shall be paid or, if unpaid before any dividend shall be declared, set apart or paid on the business day thereafter. The holders of Preferred Stock shall be entitled to all other dividends which may be declared by the Board of Directors from the surplus or net earnings of the Company. The holders of Preferred Stock shall have no right to vote as any matter of the corporation except when the question to be voted on is a proposed increase of the authorized capital of the Company. The Company may redeem all or any part of the Preferred Stock on the first day of July 1938, or on any regular quarterly dividend payment day thereafter by sending a notice of the redemption of the stock to be redeemed at least two weeks prior to, and by publishing such notice once a week for six successive weeks prior to, such day of redemption and by paying in the case of such stock 105% of the par value thereof and all dividends accrued, unpaid, and unpaid thereon to the date of such redemption and after such date all rights of such stock shall cease except the right to receive payment in the manner herein provided and as set forth in the amended certificate of incorporation of the Company. In case of liquidation or dissolution, winding up, or distribution of the assets of the Company the holders of Preferred Stock shall be entitled to payment in full of the par value of their shares and all unpaid accumulated dividends thereon before any amount shall be paid to the holders of Common Stock and thereafter the remaining assets of the Company shall be divided pro rata among the holders of the Common Stock. The foregoing conditions can thereafter be legally varied by the Company with the consent of two-thirds of the then outstanding Preferred Stock.

IN WITNESS WHEREOF the said The Pusey and Jones Company has caused this certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed, this

Christoffer Hammerig, Inc.

Christoffer Hammerig, Inc.
President

EXHIBIT A

Notice: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular.

For Value Received WE hereby sell, assign and transfer unto

CHRISTOFFER HANNEVIG

Shares _____

of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____

Attorney _____

to transfer the said stock on the Books of the within named Company with full power of substitution in the premises.

Dated OCT. 29 1918

19 _____

Sealed and Delivered

In presence of

A. Slater

CHRISTOFFER HANNEVIG, INC.

BY Christoffer Hannevig President



Reifund Treasurer.

Notice: Signatures to all powers of Attorney and also all powers of substitution must be Guaranteed by party presenting Certificate of Stock for transfer.

Christoffer Hannevig



INCORPORATED UNDER THE LAWS

OF THE STATE OF DELAWARE.

THE PUSEY AND JONES COMPANY

SHARES \$100 EACH



This is to certify that

CHRISTOFFER HANNEVIG, INC.

to the owner of Two Thousand fully paid and non-assessable shares in the Preferred Capital Stock of the Pusey and Jones Company transferable only on the books of the Company, in person or by attorney, upon surrender of this certificate properly endorsed. The holders of Preferred Stock shall be entitled to receive when and as declared out of the surplus or net earnings of the Company available for dividends, a fixed cumulative dividend at the rate of but never exceeding eight percent per annum payable quarterly on the first days of January, April, July, and October, which dividends shall be paid or set apart before any dividend shall be declared, set apart or paid on the Common Stock. The holders of Common Stock shall be entitled to all other dividends which may be declared by the Board of Directors from the surplus or net earnings of the Company. The holders of Preferred Stock as such shall have no right to vote at any meeting of the stockholders in any case where the question to be voted on is a proposed increase of the total authorized amount of the Preferred Stock of the Company. The Company may redeem all or any part of the Preferred Stock on the first day of July 1928 or on any regular quarterly dividend payment day thereafter by mailing a notice of the names of the stock to be redeemed at least two months prior to, and by publishing such notice once a week for six successive weeks prior to, such day of redemption and by paying to the owner of such stock 104 3/4% of the par value thereof and all dividends accrued, unpaid, and unpaid thereon to the date of such redemption, and after such date all copies of such stock shall cease except the right to receive payments in the manner herein provided and as set forth in the Certificate of Incorporation of the Company. In case of liquidation, dissolution, winding up, or distribution of the assets of the Company, the holders of Preferred Stock shall be entitled to payment in full of the par value of their shares and all unpaid accumulated dividends thereon before any amount shall be paid to the holders of Common Stock, and thereafter the remaining assets of the Company shall be divided pro rata among the holders of the Common Stock. The mortgage indentures now and hereafter to be legally created by the Company with and the consent of the holders of the then outstanding Preferred Stock.

IN WITNESS WHEREOF the said The Pusey and Jones Company has caused this certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed this 12th day of APRIL 1918.

C. J. Hansen
Treasurer

Christoffer Hannavig
President



For Value Received we hereby sell, assign and transfer unto
CHRISTOFFER HANNEVIG

Shares
 of the Capital Stock represented by the within Certificate, and do hereby
 irrevocably constitute and appoint _____
 _____ Attorney
 to transfer the said stock on the Books of the within named Company with full
 power of substitution in the premises.

Dated OCT 29 1918 19____
 Sealed and Delivered CHRISTOFFER HANNEVIG, INC.
 in presence of
[Signature] By [Signature] President
[Signature] Treasurer.

Notice: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular.

Notice: Signatures to all powers of attorney and also all powers of substitution must be guaranteed by party presenting Certificate of Stock for transfer.

Christoffer Hannevig

RECORDED
 OCT 30 1918
 100-10000



INCORPORATED UNDER THE LAWS

OF THE STATE OF DELAWARE.

THE PUSEY AND JONES COMPANY

SHARES \$100 EACH



This is to certify that Christoffer Kannevig
has received Two Hundred (200) shares

of the common stock of the Pusey and Jones Company, transferable only in the books of the company in person or by attorney upon surrender of the certificate properly endorsed. The holders of Preferred Stock shall be entitled to receive when and as declared, out of the surplus or net earnings of the company, a dividend, a fixed cumulative dividend at the rate of not more exceeding eight per cent per annum payable quarterly on the first days of January, April, July and October which dividend shall be paid or set apart before any dividend shall be declared or paid on the Common Stock. The holders of Common Stock shall be entitled to all dividends which may be declared by the Board of Directors from the surplus or net earnings of the company. The holders of Preferred Stock shall have no right to vote at any meeting of the corporation except when the question is one in relation to a proposed increase of the total authorized amount of the Preferred Stock of the company. The company may redeem all or any part of the Preferred Stock on the first day of July 1918 or on any regular quarterly dividend payment day thereafter by sending a notice of the redemption of the same to be declared at least two months prior to the mailing of such notice to each of its common stockholders. Each day of redemption shall be payable by payment to the owner of such stock at 95% of the par value thereof and all dividends accrued, interest and unpaid thereon to the date of such redemption, and after such date all copies of such stock shall not except the right to receive payment on the same as herein provided and as set forth in the amended certificate of incorporation of the company. In case of liquidation or winding up or distribution of the assets of the company the holders of Preferred Stock shall be entitled to payment in full of the par value of their shares and all unpaid accumulated dividends thereon before any amount shall be paid to the holders of Common Stock and thereafter the remaining assets of the company shall be divided pro rata among the holders of the Common Stock. The mortgage certificate may hereinafter be legally created by the company with out the consent of the stockholders of the then outstanding Preferred Stock.

In Witness Whereof the said Pusey and Jones Company has caused this certificate to be signed by its duly authorized officers and its corporate seal to be here affixed this 15th day of December 1918.

Henry S. Parster
Treasurer



W. H. Hansen
President

Notice: Signatures to all powers of attorney and also all powers of substitution must be guaranteed by party presenting Certificate of Stock for transfer.

For Value Received _____ hereby sell, assign and transfer unto

Shares _____

of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____

Attorney _____

to transfer the said stock on the Books of the within named Company with full power of substitution in the premises.

Dated _____ 19 _____

Sealed and Delivered
in presence of

Charles H. Stanley 

Notice: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular.

\$50,000.00
 Four (4) months — after date we promise to pay No.
 4, the order of Christopher Hannen, Inc., at the
 DELAWARE TRUST COMPANY
 8 E CORNER NINTH AND MARKET STS WILMINGTON DEL
 Fifty thousand and no/100 — Dollars
 without deduction for value received, with 50/100
 CREDIT THE DRAWER
 C. J. McElroy
 Vice President
 Christopher Hannen, Inc.
 August 18, 1917

Extended according to letter
 dated September 18, 1917 to
 U.S. Shipping Board Emergency
 Fleet Corporation.
 CHRISTOPHER HANNEN, INC.,
 Vice President
 Christopher Hannen, Inc.

CHRISTOFFER HANNEVIG, INC.

Fin Hamberg
Vice President

Christopher Hanning is
the Hanning family
President

\$50.000.⁰⁰/₁₀₀

Wilmington, Del. Aug. 16th 1917

your mother's - approximate Wednesday!
to the mother of Christopher Hammering. See at the No.

DELAWARE TRUST COMPANY

N. E. CORNER NINTH AND MARKET STS WILMINGTON, DEL.

Fifty thousand and no/100 — Dollars
 N. E. CORNER NINTH AND MARKET STS WILMINGTON, DEL.

without deduction for value received, or the 5% int.
CREDIT THE DRAWER.

Countess

Constantine

the Society for the Propagation of the Gospel
in the South Sea Islands
London
1791

Associates & Friends

\$25,000.00
 Four (4) months after date we promise to pay No.
 to the order of Christopher Hannenberg Inc. at the
 Delaware Trust Company
 17 CORNER NINTH AND MARKET STS. WILMINGTON, DEL.
 Twenty-five thousand and no/100 Dollars
 without deduction for value received, with 5% int
 commencing on the date of the drawing
 C. J. McLean
 Vice President
 Christopher Hannenberg Inc.
 Assistant Secretary

CHRISTOPHER HANNEBERG, INC.
 Vice President
 C. J. McLean

Extended according to letter
 dated September 19, 1917 to
 U.S. Shipping Board Emergency
 Fleet Corporation.

Christopher Hannenberg Inc.
 Assistant Secretary
 C. J. McLean

\$25,000.00
 Three (3) months — after date we promise to pay
 to the order of Christopher Hannavig, Inc. at the
 Wilmington, Del., Aug. 29th, 1917

DELAWARE TRUST COMPANY
112 CORNER NINTH AND MARKET STS WILMINGTON, DEL.

Twenty-five thousand and no/100 — Dollars
 without deduction for value received, with 5% int.
 Countersigned: *W. J. Jones* and *Jones Company*
C. J. McLean

W. J. Jones
C. J. McLean

Extended according to letter
 dated September 15, 1917 to
 U.S. Shipping Board Emergency
 Fleet Corporation.

CHRISTOPHER HANNAVIG, INC.
W. J. Jones
 Vice President

W. J. Jones
W. J. Jones
W. J. Jones

Extended according to letter
dated September 18, 1917 to
U.S. Shipping Board Emergency
Fleet Corporation.

CHRISTOFFER HANNEVIG, INC.,

Kim Hannvig
Vice President

Christopher Hannvig
Christopher Hannvig
President

\$25,000.00	Wilmington, Del. Dec. 31st, 1917.
Full (3) months —	after date we sign this day
to the order of	Christoffer Hannvig, Sec. at the
DELAWARE TRUST COMPANY	
N. E. CORNER NINTH AND MARKET STS. WILMINGTON, DEL.	
Twenty-five thousand and no/100 —	Twenty
without deduction for income received, with 5% per	and Free Company
Countersigned by:	Wilmington
<i>Wm. Hannvig</i>	Sec. at the
<i>Wm. Hannvig</i>	Sec. at the
<i>Wm. Hannvig</i>	Sec. at the

\$75,000.00
Three (3) months — *Wilmington, Del., Sept. 13, 1917*
to the order of Christy & Co. Merchants, Inc., at the *No.* *Due*
DELAWARE TRUST COMPANY
N. E. CORNER NINTH AND MARKET STS., WILMINGTON, DEL.
Seventy-five thousand and no/100 *Dollars*
without deduction for value received, with 5% int.
Countersigned: *Wm. H. Davis* *President*
Charles G. Green *Secretary*

Extended according to letter
 dated September 10, 1917 to
 U.S. Shipping Board Emergency
 Fleet Corporation.
 CHRISTOPHER HANKEVIC, INC.
John Hancock
 Vice President

Wm. H. Davis
President

Extended according to letter
dated September 18, 1917 to
U.S. Shipping Board Emergency
Fleet Corporation.

CHRISTOPHER HANNEVIS, INC.
John J. Hannevis
Vice President

*Christopher Hannevis Inc.
Christopher Hannevis
Baltimore*

\$50,000.00	Wilmington, Del.	Sept 27 th 1917
<p><i>Will be paid to the order of the undersigned</i> <i>in the order of the undersigned</i></p>		
<p>DELAWARE TRUST COMPANY</p> <p><small>N. E. CORNER NINTH AND MARKET STS., WILMINGTON, DEL.</small></p>		
<p><i>Five hundred and no/100</i></p> <p><small>without obligation for value received as to 50 c. int.</small></p> <p><small>CREDIT THE DRAWER</small></p>	<p><i>and 1/100 of 100</i></p> <p><i>and 1/100 of 100</i></p>	<p><i>John J. Hannevis</i></p> <p><i>and 1/100 of 100</i></p> <p><i>and 1/100 of 100</i></p>

Will you kindly advise Mr. Hanssen that this transfer will be made and confirm the same by letter to me and oblige. Yours very truly, (Sgd.) John P. Nields, Attorney for Hans Karluff Hanssen.

(Here follows Exhibit C, notes of defendant held by complainant, marked pages 33-42, inclusive.)

43

EXHIBIT "D."

June 6, 1921.

Delaware Trust Company, N. E. Cor. Ninth and Market Streets, Wilmington, Delaware.

GENTLEMEN: The bearer of this letter, Mr. Hans Karluf Hansen, the lawful owner and holder of the nine promissory notes hereinafter mentioned, aggregating the principal sum of Six hundred fifty thousand dollars (\$650,000), presents herewith the originals of each and all of said notes, namely:

First: Note dated July 27, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Second. Note dated August 1, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc. for the sum of Fifty Thousand Dollars (\$50,000), payable four months after date at The Delaware Trust Company, with interest at the rate of five per cent (5%).

Third. Note dated August 16, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Fourth. Note dated August 23, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc.,
44 for the sum of Twenty-five Thousand Dollars (\$25,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Fifth. Note dated August 29, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Twenty-five Thousand Dollars (\$25,000), payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Sixth. Note dated August 31, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Twenty-five Thousand Dollars (\$25,000), payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Seventh. Note dated September 13, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for

the sum of Seventy-five Thousand Dollars (\$75,000), payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Eighth. Note dated September 27, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable three months after date, at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Ninth. Note dated October 1, 1917, made by The Pusey
45 and Jones Company to the order of Christoffer Hannevig,
for the sum of Three Hundred Thousand Dollars (\$300,000)
payable three months after date at the Delaware Trust Company,
with interest at the rate of five per cent. (5%).

and hereby makes formal demand for the payment of said sum of Six hundred fifty thousand dollars (\$650,000) with interest thereon as represented in said notes.

Please let Mr. Hanssen have a written reply hereto for delivery to me, and oblige, Yours very truly, (Sgd.) John P. Nields, Attorney for Hans Karluf Hanssen.

June 6, 1921.

The Pusey and Jones Company, Corner Front & Poplar Streets, Wilmington, Delaware.

GENTLEMEN: The bearer of this letter, Mr. Hans Karluf Hanssen, the lawful owner and holder of the nine promissory notes hereinafter mentioned, aggregating the principal sum of Six hundred fifty thousand dollars (\$650,000), presents herewith the originals of each and all of said notes, namely:

First. Note dated July 27, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable four months
46 after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Second. Note dated August 1, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc. for the sum of Fifty Thousand Dollars (\$50,000), payable four months after date at The Delaware Trust Company, with interest at the rate of five per cent. (5%).

Third. Note dated August 16, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Fourth. Note dated August 23, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Twenty-five Thousand Dollars (\$25,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Fifth. Note dated August 29, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Twenty-five Thousand Dollars (\$25,000), payable three

months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Sixth. Note dated August 31, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Twenty-five Thousand Dollars (\$25,000), payable
47 three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Seventh. Note dated September 13, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Seventy-five Thousand Dollars (\$75,000), payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Eighth. Note dated September 27, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable three months after date, at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Ninth. Note dated October 1, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, for the sum of Three Hundred Thousand Dollars (\$300,000) payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

and hereby makes formal demand for the payment of said sum of Six hundred fifty thousand (\$650,000) with interest thereon as represented in said notes.

Please let Mr. Hanssen have a written reply hereto for delivery to me, and oblige, Yours very truly, (Sgd.) John P. Nields, Attorney for Hans Karluf Hanssen.

48 Delaware Trust Company, Wilmington, Delaware.

June 6, 1921.

Mr. John P. Nields, Attorney for Hans Karluf Hanssen, Wilmington, Delaware.

DEAR SIR: This is to acknowledge receipt of your letter of this day introducing to us Mr. Hans Karluf Hanssen, who presents for payment the following notes of the Pusey & Jones Company, endorsed by Christoffer Hannevig, aggregating the principal of \$650,000.

Date.	Due.	Amount.
July 27, 1917.	4 months	\$50,000.
Aug. 1, " 4 "	"	50,000.
Aug. 16, " 4 "	"	50,000.
Aug. 23, " 4 "	"	25,000.
Aug. 29, " 3 "	"	25,000.
Aug. 31, " 3 "	"	25,000.
Sept. 13, " 3 "	"	75,000.
Sept. 27, " 3 "	"	50,000.
Oct. 1, " 3 "	"	300,000.

The above notes are all past due and payable at the Delaware Trust Company and in reply to Mr. Hans Karluf Hanssen, who is making formal demand for payment of these notes, we refuse payment as there are no provisions made for same. Yours very truly, (Sgd.) S. S. Baker, Secretary.

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EXHIBIT "E."

October 22, 1919.

Memorandum for the Chairman.

Subject: The Pusey & Jones and Christoffer Hannevig Situation.

By your direction we have given careful study to the existing relations between the Pusey & Jones Company and other Hannevig interests and the Emergency Fleet Corporation, and herewith submit our report.

I.

Construction Program of the Pusey & Jones Yards on August 3, 1917.

The Pusey & Jones Company, a corporation of Delaware, is the owner of three shipyards, one at Wilmington, Delaware, and two at Gloucester City, New Jersey. The company is a consolidation, effected on or about December 21, 1917, of three predecessor companies, like the present company, were owned and controlled by Christoffer Hannevig. They were:

The Pennsylvania Shipbuilding Company, Gloucester City, N. J.

The New Jersey Shipbuilding Company, Gloucester City, N. J.

Pusey & Jones Company, Wilmington, Del.

At the date of the Government's requisitioning orders Hannevig had recently converted the Pusey & Jones yard at Wilmington (formerly adapted only for yachts, tugs, etc.) into a yard for the construction of small cargo vessels. He had recently organized the Pennsylvania Shipbuilding Company and its yard was in course of construction. He had also organized the New Jersey Shipbuilding Company, but its yard, adjoining that of the Pennsylvania Company at Gloucester City, New Jersey, was as yet merely a project.

50 Prior to the requisitioning orders Hannevig had committed these three yards to a construction program of forty-five vessels, aggregating 312,900 deadweight tons distributed as shown in the following table:

Distribution of Construction.

Yard.	Type.	Tonnage.	Total.
Pennsylvania (19):			
Hulls 1 to 6, 6,	7000 tanker	42,000	
13 and 14, 2,	7500 cargo	15,000	
15 to 19, 11,	12500 "	137,500	194,500
New Jersey (12):			
Hulls 201 to 212, 12,	5000 "	60,000	
Wilmington (14):			
Hulls 1001 to 1005, 6,	4000 "	24,000	
1007 to 1014, 8,	4350 "	34,400	58,400
			<hr/> 312,000

These prospective vessels were all covered by formal contracts with the exception of nine, as to which there was only Hannevig's informal order.

Hannevig was not only the prospective builder of the vessels (through the Pusey & Jones predecessor companies), but also practically dealt as the purchaser of them (i. e., either personally, or through his corporate "dummies" Bulk Oil Transports, Inc., and Manss Steamship Corporation, or through his Norwegian associates).

An Exhibit is attached, marked Exhibit "A," which shows (1) the original contract owners of the 45 vessels, and (2) the owner as of August 3, 1917. As shown by the Exhibit, 17 of the original contracts were placed by Hannevig personally (8 by formal contracts and 9 by informal order), 15 by the Bulk Oil Transports, Inc., and 8 by Manss Steamship Corporation. The remaining five contracts were placed by various Norwegian- as the nominal purchasers (whether bona fide or not does not appear); they they also were controlled by Hannevig, either as the purchaser in fact, which he in some instances represented himself to be, or by him as the professed agent of the nominal owner.

By August 3, 1917, Hannevig had sold eighteen of the prospective vessels—seventeen to the Cunard Steamship Company, Ltd., namely, Pennsylvania Hull Nos. 1 and 3 to 10, inclusive (9 vessels), and Wilmington Hull Nos. 1001 to 1008, inclusive (8 vessels), and one to the Continental Transportation & Oil Company, namely, Pennsylvania Hull No. 2. In effecting these transfers, Hannevig in some instances boosted the original contract prices by procuring the cancellation of the original contract and the execution of a new one in its place between the shipyard and his vendee, in which new contract an enhanced price was stipulated for the vessels. In such instances the new owner paid the difference in the price directly to

the shipyard as a part payment on the vessel, and Hannevig then took this money from the company and diverted it to his own use. In other instances he left the original contract price unchanged, in which cases he took the consideration for the assignment directly from the new owner and kept the money so taken. The money thus taken by Hannevig properly constituted a part of the capital assets of the shipbuilding companies, to be used by them in the performance of their contract obligations.

II.

Rights Acquired by the Fleet Corporation.

A. By Requisitioning Orders.

B. By Subsequent Agreements.

C. By Purchase From Cunard Company, Ltd.

A. Rights under Requisitioning Orders.—The Fleet Corporation on August 3, 1917, issued its general requisitioning orders, and it thereby became entitled, as a matter of law, to have the construction program of the Pusey & Jones yards (or so much thereof as it desired) completed for its account. By virtue of these orders, it also became obligated (a) to pay, to the persons entitled thereto, just compensation for the property requisitioned, and (b) to make just compensation for the further work ordered to be done for its account.

B. Subsequent Agreements.—The only agreements of the Fleet Corporation (except as to increased wage scales, etc.) subsequently modifying the obligation arising by law as a result of the requisition orders relate to Pennsylvania Hull Nos. 15 to 19, inclusive—informal orders placed by Hannevig—and New Jersey Hull Nos. 201 to 212, inclusive, consisting of eight vessels under contract to Manss Steamship Corporation and four vessels informally ordered by Hannevig. They were embodied in correspondence passing between the officials of the Fleet Corporation and the builders, a copy of which is attached marked Exhibit "B." By these agreements the Fleet Corporation undertook, as to the 5 Pennsylvania hulls, to pay the builder the cost of Construction plus \$204,000.00 per vessel, and with respect to the 12 New Jersey hulls to pay the builder the cost of construction plus \$17.50 per ton—the cost of construction to include, in each case, a factor of depreciation. In each case the agreement provided that if the cost fell below a stipulated amount the builder and the Fleet Corporation were to share equally in the saving.

C. Rights acquired from Cunard Company, Ltd.—The Fleet Corporation has also acquired, by assignment from the Cunard Company, the rights which that company had under its contracts for seventeen of the vessels to be constructed at the Pusey & Jones yards, which rights entitle the Fleet Corporation, as hereinafter more particularly shown, to apply as a part payment on these vessels the sums which Hannevig took, upon the transfer of the vessels to the Cunard Company, and diverted from the capital assets of the shipyards.

III.

Present Construction Program.

Since August 3, 1917, the Fleet Corporation has cancelled 60,000 tons of construction, namely, Pennsylvania Hulls 13 and 14, of 7,500 tons each, and New Jersey Hulls 204 to 212, inclusive, of 5,000 tons each, leaving the construction program 252,900 tons.

The state of completion of this program (as of October 15, 1919) is as follows:

	Vessels.	Tons.
Tonnage originally contemplated.....	45	312,900
Tonnage cancelled	11	60,000
		<hr/>
		252,900
Tonnage suspended	2	25,000
		<hr/>
		227,900
Tonnage delivered	22	135,700
		<hr/>
Tonnage under construction.....	10	92,200

The percentage of completion of the 92,200 tons now under construction is shown as 44.77% by the report of the District Manager of the Fleet Corporation for the Delaware River District.

An Exhibit is attached marked Exhibit "C" showing, by yards and hulls numbers, the vessels cancelled, suspended, delivered and in course of construction.

An Exhibit is also attached, marked Exhibit "D," showing (as of October 15, 1919) the state of construction of the hulls now under construction (10 vessels).

Proposals to Adjust Relations with the Pusey & Jones Company.

Various bases for compensating the Pusey & Jones Company for the work of construction have been under consideration by the Fleet Corporation officials. On or about August 25, 1919, at a conference between the officials of the Construction Division of the Fleet Corporation and the representatives of the Pusey & Jones Company, a definite basis was outlined for the adjustment of all claims of the Pusey & Jones Company growing out of the requisitioning acts of the Fleet Corporation or in virtue of any subsequent agreements between the parties. This basis of compensation was acceptable to the Pusey & Jones Company. It also appears to represent the views of the Construction Division of the Fleet Corporation as to what would constitute a just award of compensation for the actual work of construction tonnage embraced in the program with Pusey & Jones Company.

By the settlement thus proposed the Pusey & Jones Company would be allowed:

1. For construction completed and to be completed (252,900 tons) the following prices, which include a \$10.00 per ton profit, and cost of all extras and changes with certain specific exceptions.

Vessels.	Yard.	Prices.		Total.
		Per ton.	Per vessel.	
8— 4300.	Wilmington.	\$230.52	\$991,236.00	\$7,929,888.00
6— 4000.	"	221.02	884,080.00	5,303,480.00
3— 5000.	New Jersey .	309.52	1,547,600.00	4,642,800.00
6— 7000.	Penna.	240.52	1,683,640.00	10,101,840.00
11—12500.	Penna.	179.52	2,214,000.00	24,684,000.00
				<hr/> \$52,663,008.00

- 55 2. An allowance for amortization of investment in plant facilities. 1,500,000.00
3. An allowance for depreciation of plant and facilities 1,375,000.00
4. Compensation for cancelled construction (60,000 tons) 600,000.00

The plan further contemplates—

5. That the amounts to be allowed as amortization, for depreciation and as compensation for cancelled tonnage shall not be paid in cash but credited on the mortgage indebtedness of the Pusey & Jones Company to the Fleet Corporation on delivery of the last vessel to be constructed by the Pusey & Jones Company, provided it performs its contract; the Wilmington yard to be released at this time for the lien of the existing mortgage.

6. That the Fleet Corporation will supply the Pusey & Jones Company with not to exceed \$3,500,000.00 working capital, the exact amount at any time to be in the discretion of the Fleet Corporation, and in any event to be reduced as the work of construction progresses.

7. That the profit to the Pusey & Jones Company shall be applied in reduction of the mortgage indebtedness.

8. That interest shall not commence to run on the working capital and mortgage indebtedness of the Pusey & Jones Company to the Fleet Corporation until October 1, 1920.

Memorandum for the Chairman.

9. That the Fleet Corporation shall reimburse the Pusey & Jones Company for all expenditures made by it on account of canceled tonnage, and assume all commitments of Pusey & Jones for such cancelled tonnage.

56 10. That the Pusey & Jones Company shall assign its interest in the Noreg Realty Company (a housing project at Gloucester) to the Fleet Corporation.

11. That Pennsylvania Hulls 15 to 19, inclusive, heretofore suspended, shall be reinstated, and that the cancellation of Pennsylvania Hulls 13 to 14 and New Jersey Hulls 304 to 312, inclusive shall stand.

The foregoing plan undertakes to award the just compensation properly due for the work of constructing the vessels delivered and to be delivered; against such compensation there must be charged the amounts to which the Government is entitled to apply in part payment, in virtue of the rights acquired from the former owners. These rights will now be considered.

V.

Right of Fleet Corporation to Look Through Corporate Forms to Hannevig.

Christoffer Hannevig not only owns the entire capital stock of the Pusey & Jones Company, but also owns and controls the Bulk Oil Transports, Inc., and Manss Steamship Corporations. As he dictated the placing of the contracts between these companies, both as the builder and as the owner, the Fleet Corporation is entitled to look through the corporate forms to the substance of the transactions, and it should, in any adjustment with the Pusey & Jones Company, require a disposition of the related matters growing out of these intercorporate transactions.

(a) Right of Fleet Corporation to Apply as a Credit on the Payment of the Vessels the Sums Taken by Hannevig.

It will be remembered that Hannevig in committing his yards to a construction program of 45 vessels had done so by placing
57 informal orders for 9 vessels for his personal account, by making formal written contracts between himself and his shipbuilding company for 8 vessels and by causing the execution of 15 formal contracts between the shipyard and the Bulk Oil Transports, Inc., and 8 formal contracts between the shipyard and Manss Steamship Corporation.

The remaining five contracts were originally placed by various Norwegians and the shipyard. These five Norwegian contracts (covering Pa. hull Nos. 1, 2, 3, 7 and 8) were controlled by Hannevig, either as the purchaser in fact or professedly as the agent for the nominal owners. Before August 3, 1917, he procured the cancellation of four of them (Pa. hull Nos. 1, 3, 7 and 8) and the execution of new contracts in their place directly between the Pennsylvania Shipbuilding Company and the Cunard Steamship Company, Ltd. at increased prices. He also, prior to August 3, 1917, procured the assignment to himself of the contract covering Pa. Hull No. 2 and then entered into contract (January 25, 1917) with the Continental Transportation & Oil Company to deliver the vessel, when completed, to that company, but at an increased price.

Hannevig also procured the cancellation of the original contracts between the Pennsylvania Shipbuilding Company and Bulk Oil Transports, Inc. covering Pa. Hull Nos. 4, 5, and 6 and 9 and 10 (five vessels), and the execution of new contracts between the shipbuilding company and the Cunard Steamship Company, Ltd., at increased prices for the vessels; and these transactions occurred prior to August 3, 1917.

Hannevig also assigned, prior to August 3, 1917, the original contracts between him and the Pusey & Jones Company, Wilmington, covering Wilmington Hull Nos. 1001 to 1008, inclusive, to the

58 Cunard Company and procured the execution of supplemental agreements consenting to the assignment and the modification of certain of the terms and conditions of the original contracts. The prices stipulated in the original contracts remained unchanged, the consideration for the assignments being paid by the Cunard Company directly to Hannevig.

By August 3, 1917, therefore, he had thus sold eighteen of the forty-five hulls here in question. On nine of the Pennsylvania hulls Hannevig took from the Shipyard the amount which it had received from the Cunard Company in excess of the original contract price. On Pennsylvania hull No. 3, sold to the Continental Transportation & Oil Company, Hannevig took an excess of \$330,000.00 over the original contract price. And on the eight Wilmington hulls sold to the Cunard Company, Hannevig took directly from the Cunard Company the difference between the resale price and the original contract price. The sums which Hannevig thus took upon these transactions amounted to \$5,297,000, in the case of the Cunard vessels and to \$330,000.00 in the case of the Continental Transportation & Oil Company's vessel, and the Fleet Corporation has already repaid the Cunard Company (contract January 30, 1918) and awarded to the John M. Conelly Company (a subsidiary of the Continental Company) just compensation which includes the \$330,000.00 taken by Hannevig.

The sums taken by Hannevig on each of the eighteen hulls sold by him are set forth in Exhibit "E" attached hereto.

On well settled principles of law, the Cunard Steamship Company, Ltd., and the Continental Transportation & Oil Company had the undoubted right to require the moneys, paid by them, to be applied to the performance by the shipyards of their obligation to build the vessel. The Fleet Corporation has purchased 59 these same rights, 100%, and is entitled to apply the money which Hannevig thus took, as a credit in payment by it for the vessels requisitioned.

In addition to the credit of this principal sum of \$5,627,000.— interest upon the amount should be charged at least from August 3, 1917, and this is particularly fitting, not only because the taking of the money was in the first instance a wrongful diversion of credits to which the Fleet Corporation (through its predecessors in interest) was properly entitled, but also because the Fleet Corporation has, since August 3, 1917, practically financed the work of the Pusey & Jones yards, and it now actually has outstanding as a loan to the

Pusey & Jones Company without interest, on account of plant construction, the amount of \$6,146,696.89 (as of September 30, 1919.)

(b) Right of Fleet Corporation to Require Release of All Claims of Hannevig and His Controlled Corporations.

Any adjustment with the Pusey & Jones Company should also comprehend a full release of the Fleet Corporation and the Government by Hannevig and his various corporations. Disregarding corporate fictions, the balances for which the Bulk Oil Transports, Inc., and the Manss Steamship Corporation have not been reimbursed by the Fleet Corporation on hulls covered by their contracts (i. e., on account of their progress payments to the yards) should be applied as a credit in the final adjustment with the Pusey & Jones Company.

The amount of these progress payments and the extent to which the Fleet Corporation has repaid them are, in the case of the two companies, respectively as follows:

60 Bulk Oil Transports, Inc.	
Progress payments	\$468,162.50
Repaid by E. F. Co.	250,000.00
	<hr/>
Balance	218,162.50
Manss Steamship Corporation:	
Progress payments	\$306,250.00
Repaid by E. F. C.	175,000.00
	<hr/>
Balance	\$131,250.00

In addition to the progress payments made by the Bulk Oil Transports, Inc., and the Manss Steamship Corporation represented by cash paid to the yards, these companies have made certain promissory notes agreeing to pay the yards an aggregate sum of \$663,750.00, which the Fleet Corporation is asked to pay. The request should be denied.

VI.

Obligation of Fleet Corporation on Basis of Proposed Adjustment After Deducting Credits to Which it is Entitled.

Taking into account the credits which the Fleet Corporation is entitled, its obligation to the Pusey & Jones Company on the basis of the proposed settlement is as follows:

The aggregate amount to be paid Pusey & Jones Company upon the basis of the prices under the proposed adjustment would be \$52,663,008.00.

Against this amount should be credited the following:

61	Cash advanced by E. F. C. for ship construction:	
	(a) Distributed to hulls	\$33,137,906.94
	(b) Undistributed ...	987,711.05
		<hr/>
	Advances by former owners heretofore credited to E. F. C. on Pusey & Jones Co. books.....	\$34,125,617.99
	Advances by former owners taken by Hannevig which should be credited to E. F. C.	5,035,462.50
	Interest 5% Aug. 3, 1917 to Nov. 3, 1919	\$5,627,000.00
		<hr/>
		633,033.00
		<hr/>
		6,260,033.20
		<hr/>
		45,421,113.49
	Amount which E. F. C. is obliged to pay to have the entire tonnage completed.....	\$7,241,894.51
	In addition to the above, the Pusey & Jones Company will be entitled to credits, to be applied upon its mortgage indebtedness, as follows:	
	(a) Amortization	\$1,500,000.00
	(b) Depreciation	1,375,000.00
	(c) Cancellation allowance	600,000.00
		<hr/>
		3,475,000.00
		<hr/>
		\$10,716,894.51

In other words, the Fleet Corporation, on the basis of the prices stipulated in the proposed adjustment, is obligated to pay the sum of \$7,241,894.51 (which includes the ten dollars per ton profit amounting to \$2,529,000.00) — in return for which, the Pusey & Jones Company is obligated to complete the entire construction program. It cannot do so however, in its present financial condition, resulting from Hannevig's depletion of its assets.

62 It is estimated by the Construction Division of the Fleet Corporation that it will require approximately \$12,000,000.00 cash to complete actual construction, or roughly, \$5,000,000.00 more than the Pusey & Jones Company is entitled to receive.

The diversion by Hannevig of the payments on account of ship purchases made by former owners has still another consequence. The Fleet Corporation has, in order to enable the Pusey & Jones Company to finance the construction of its plants, loaned it the sum of \$6,146,696.89 (to September 30, 1919) secured by mortgage on its properties. The proposed adjustment contemplates the reduction of this debt by the application thereon, on completion of the last ship (A) of profits, (B) Amortization, (C) of depreciation, and (D) of cancellation allowance.

But as seen from the above, Pusey & Jones have not sufficient working capital now, nor will they receive sufficient additions thereto for payments made by the Fleet Corporation under the proposed agreement to complete the proposed program.

Hann-vig claims that he used a part of the Cunard and the Conelly advance payments taken by him, in acquiring the securities of the Pusey & Jones Company at a later date. That circumstance, however, if true, does not discharge the credit to which the Fleet Corporation is entitled.

From the balance sheets of the three shipbuilding companies (July 31, 1917) now comprising the Pusey & Jones Company, it appears that Hannevig's investments in the Pusey & Jones yards was at the time of the Government's requisitioning orders about \$2,800,000.00; and we are advised by him that since that time he has invested in the yards by stock purchase and loans the further sum of \$3,800,000.00.

63 In a word, Hannevig took a total of \$5,627,000.00 cash from the company which should have been credited to the Emergency Fleet Corporation as a part payments for vessels. He says that later he invested in the company \$3,200,000.00, but it will be noted that the effect of this transaction was to increase his holding in the corporate security. How does that satisfy the \$5,627,000.00 credit to which the Emergency Fleet Corporation is entitled? If the corporation needed more capital its stockholders could invest, but he cannot use for this purpose the credits due to a third party.

For example, should Mr. Gary of the United States Steel Corporation take a \$5,627,000.00 cash payment which came across his desk, paid by the United States Government to the United States Steel Corporation on one of its contracts as a progress payment, and put the \$5,627,000.00 in his pocket, he could not then say to the Government that it was not entitled to a credit for the amount because he had just purchased treasury stock of the Steel Corporation to the extent of \$3,200,000. Nor could he say to the corporation that he was entitled to this sum because he bought certain treasury stock.

Conclusion and Recommendations.

In reference to the proposed agreement of August 25, 1919, we recommend:

First: That the lump-sum prices per dead weight ton for the tonnage delivered and to be delivered, and the allowance for amortization, depreciation and cancellation, as set forth therein be adopted.

Second. That all amounts due or to become due or to be advanced under the agreement be under the control of the Fleet Corporation's

64 Comptroller, and that any excess moneys be applied to the satisfaction of obligations due to the Fleet Corporation; also

that no interest shall be charged on working capital or on the present mortgage indebtedness until after October 1, 1920, provided the company performs its contract.

Third. That sufficient working capital be provided from time to time to complete the ships to whatever extent is necessary, such moneys to be controlled, both as to amount and payments, by the Construction Division and the Fleet Corporation's Comptroller, respectively.

Fourth. That the Pusey & Jones Company be reimbursed for expenditures made by them on account of cancelled tonnage, and that the Fleet Corporation shall assume all commitments made by the Company in connection therewith.

Fifth. That the company shall assign and deed to the Fleet Corporation any and all stock or other interest that it may have in the Noreg Realty Co.

Sixth. That the Fleet Corporation reinstate the five 12,500 ton vessels and cancel the nine 5,000 ton vessels and the two 7,500 ton vessels.

Seventh. That the Fleet Corporation works in harmony with Mr. Hannevig and his interests to dispose of in whole or in part, the plants and facilities used in performing the contract, and that all moneys received from the sale of any equities be paid to the Fleet Corporation to apply on the obligations due to it until they are fully satisfied. Respectfully submitted, Lincoln R. Clark, John A. Beck, Assistant Counsel.

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EXHIBIT "F."

The several represented interests subscribing to this memorandum or plan of action with respect to the Pusey & Jones corporation agree:

First. They will promote and approve the immediate election of a board of five directors of the Pusey & Jones Corporation to be constituted as follows:

Henry A. Wise, receiver in bankruptcy of Hannevig, his nominee or successor in office.

Hartwell Cabell, representing the insurance departments, or his successor appointed by them.

Laurence Leonard or other representative of the United States Shipping Interests.

George Weems Williams or other nominee of the Baltimore Dry Docks and Shipbuilding Company or a successor to be chosen as herein after provided.

William G. Cox of Delaware.

Second. The Baltimore Dry Docks and Shipbuilding Company, hereinafter called the Dry Docks Company, will proceed with the trial of the case in which it asserts a claim against the Pusey & Jones Corporation for \$750,000 and accrued interest, which case is set for trial in the United States District Court for the District of Delaware on March 22, 1921, and to the trial of said case on said date no request for postponement will be made; and the said Dry Docks Company does stipulate that no execution will be issued or levied on said judgment for the period of six months from the date of entry thereof. The Dry Docks Company does also agree that if at any time prior to the first of November, 1921, the full amount of its judgment, including accrued interest and court costs is received by it it will enter said judgment released (or assign same without recourse) and will also waive any and all rights accruing out of and in respect to the deposit of preferred and

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common stock of the Pusey & Jones Corporation by Christoffer Hannevig certificates of which are now in their possession or under their control. Upon receiving payment of said judgment interest and cost on or before the first day of November, 1921, the alleged purchase of the stock by the Dry Docks Company shall be considered as cancelled and the Dry Docks Company shall be released from any further liability to any one on account of said transaction and said stock shall be delivered by the Dry Docks Company to the said Hartwell Cabell and Henry A. Wise (and/or their respective successors) to hold the same for account of whom it may concern, and the Dry Docks Company will thereupon cause its nominee to resign from the board of directors of the said Pusey & Jones Corporation and the vacancy in said board and on the litigation and settlement committee hereinafter mentioned shall be filled by the selection of Henry A. Wise and Hartwell Cabell (or their respective successors) of a neutral and disinterested person acceptable to them both. If there is not paid to the Dry Docks Company on or before November 1, 1921, the full amount of the judgment, interest and cost, then the rights of the Dry Docks Company to the stock of the Pusey & Jones Corporation now in its possession shall be the same as if this agreement had not been executed but Henry A. Wise, one of the receivers in bankruptcy of Christoffer Hannevig or his successor and the superintendent of Insurance of the State of New York and the Superintendent of Insurance of the State of Pennsylvania shall be permitted to intervene in the suit now pending in the United States District Court for the District of Delaware or in any other litigation

now or then hereafter pending involving the title to or ownership of said stock, for the purpose of protecting their respective rights in regard to said stock and contesting the title to the same now insisted upon by the Dry Docks Company, it being understood that the said suit now pending in the said District Court of the United States for the District of Delaware shall be adjourned until November 15, 1921. The making of this agreement is without prejudice to the rights of the Dry Docks Company or the receivers or trustees of Hannevig or the superintendents of insurance of New York and Pennsylvania in regard to stock transfers made by Hannevig or title or ownership of such stock and is simply and solely an arrangement to postpone any question and the litigation of any questions in that regard until November 15, 1921, provided, however, that if before November 1, 1921, the Dry Docks Company shall have been fully paid as aforesaid this litigation shall be disposed of in the spirit of this agreement.

Third. Messrs. Rounds, Schurman and Dwight are now chief counsel for the Pusey & Jones Corporation in the litigations in connection with the prosecution of its claim against the United States Shipping Board and the United States. They shall be continued as such chief counsel with the right to continue the employment of Messrs. McKinney & Flannery as local counsel in Washington, subject, however, to the joint advice, approval and control of a litigation and settlement committee composed of Henry A. Wise or his successor and George Weems Williams or his successor to be selected as

hereinbefore provided. No proposition or compromise, adjustment or settlement shall be made or accepted on behalf of the Pusey & Jones Corporation, excepting with the consent and approval and under the general discussion of Henry A. Wise (or his suc-

68 cessor) and George Weems Williams (or his successor), Wise and Williams and their successors being hereby constituted a committee of two in full charge of all negotiations and settlements and all steps to be taken looking toward the settlement of the claims of the company against the Government or the United States Shipping Board or the Emergency Fleet Corporation. Williams shall not withhold approval of any settlement which pays Dry Docks Co. in full on or before November 1, 1921. Hartwell Cabell or his successor, however, shall be kept fully informed of developments in connection with any such negotiations or settlements, it being intended that a full spirit of co-operation shall be preserved. It is further expressly understood and agreed that the board of directors and the stockholders of the Pusey & Jones Corporation shall take appropriate action to carry out the spirit and intent of this agreement to which end the present board of directors shall elect the board hereinbefore set forth and appropriate action shall also be taken for the purpose of holding a stockholders' meeting for the ratification of such action and the board of directors shall spread this agreement in full upon the corporate minutes, approve the same and by due resolution vote to carry out its intent and purpose in good faith and to carry out this agreement in every possible way, and the United States Government and its agencies and representatives, the United States Shipping Board and the Emergency Fleet Corporation shall be duly advised of the action taken by the several interests and be requested to co-operate in the carrying out of this agreement and particularly in reaching a prompt and just settlement of all matters in controversy between the United States Government and its agencies aforesaid, and the Pusey & Jones Corporation.

69 The Board of Directors shall from time to time authorize the expenditure of such money as may in the judgment of the board be necessary and proper for the carrying out of the intent of this agreement, but no counsel shall be employed or retained by the company or compensated without the written consent and approval of said committee composed of Henry A. Wise and George Weems Williams or their respective successors.

This agreement has been entered into after conferences participated in by the following:

Jesse S. Phillips, Superintendent of Insurance of the State of New York.

Hartwell Cabell, as counsel for said Jesse S. Phillips, as liquidators of certain insurance companies.

Thomas B. Donaldson, Superintendent of Insurance of the State of Pennsylvania.

James E. Finegan, counsel for Thomas B. Donaldson, as liquidator of certain insurance companies.

William H. Hotchkiss, counsel for the Jefferson Insurance Com-

pany, North Atlantic Insurance Company and Liberty Insurance Company.

Henry A. Wise and Thomas P. Hanagan, receivers of Christoffer Hannevig by Saul S. Myers and James N. Rosenberg.

Laurence Leonard.

Charles Kimmich.

Chester Farr.

T. Langland Thompson.

George Gordon Battle.

Elon S. Hobbs.

George Weems Williams.

Sidney M. Henry, Vice President Dry Docks Company.

70 These participants in the conference leading to this agreement all have an interest in securing a prompt and equitable determination of the claim of the Pusey & Jones Corporation against the Government or its agencies.

All recognize the importance and desirability of having the committee composed of Messrs. Wise and Williams have exclusive and complete supervision of the litigation and charge of the settlements and all negotiations in respect thereto, and all parties to this agreement therefore agree that they will not interfere with any such negotiations or take any independent action whatsoever without first getting written approval of Messrs. Wise and Williams or their successor.

It is agreed that none of the parties hereto will institute or assist or acquiesce in the institution of any proceedings looking to a receivership in bankruptcy of the Pusey & Jones Corporation or other interference with the intentions of this instrument for the period to be terminated on November 1, 1921, or for such other and additional period as may be agreed upon unanimously by George Weems Williams, Hartwell Cabell and Henry A. Wise (or their respective successors). There being certain matters in issue between the receivers of Christoffer Hannevig and the insurance departments and the companies now being liquidated under their supervision, it is agreed that the insurance departments will furnish upon the request of the receivers or trustees of Hannevig such information, data and testimony as may be relevant and competent and as might be required by court order.

The making of this agreement is no recognition by the said receivers or trustees of prior rights on the part of the insurance departments in certain shares of the stock of the Pusey & Jones Corporation. The United States District Court for the Southern District of New York is to be asked to postpone the election of a trustee in bankruptcy of Christoffer Hannevig pending the determination of the matter in controversy between the Pusey & Jones Corporation and the United States Government and its respective agents.

71 New York City, March 18, 1921. Jesse S. Phillips, Supt. of Ins. of New York. Hartwell Cabell, Counsel for Above. Chas. Kimmich. Thomas B. Donaldson, Comm. of Insurance State of Penn. James E. Finegan, Counsel for Above, Atty. Com. Donaldson. Elon

S. Hobbs, Counsel for Jefferson Co. Ins. Companies. J. N. Rosenberg, for receiver of Christoffer Hannevig, As counsel for Wise & Hanagan. Chester N. Farr, Jr., Geo. Gordon Battle, Counsel for Pusey & Jones. Henry A. Wise. T. Langland Thompson, Counsel for Ch. Hannevig. Thomas P. Hanagan, Receivers Christoffer Hannevig, Bankrupt, Per Thomas Hanagan. Baltimore Dry Docks & Shipbuilding Co., by Sidney Henry, Vice President. George Weems Williams, its attorney.

EXHIBIT "G."

This agreement made this 11th day of February, 1920, by and between Pusey and Jones Company, a corporation of the State of Delaware, hereinafter called "the seller", party of the first part, and the Baltimore Dry Docks & Shipbuilding Company, a corporation of the State of Maryland, hereinafter called "the buyer", party of the second part, Witnesseth:

That in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

First. The Seller agrees to sell to the Buyer and the buyer hereby agrees to purchase from the seller the following property, upon the following terms and conditions:

(a) All that real estate situated in the City of Gloucester and Center Township, County of Camden, of the State of New Jersey, and more particularly described in the mortgage agreement dated May 14, 1918, by and between Pusey & Jones Company and the United States Shipping Board Emergency Fleet Corporation, together with all the right, title and interest of the seller in and to the riparian rights pertaining to the said real estate, and all accretions thereto, and all the right title and interest of the seller in and to the wharves and other structures constructed thereon, and together with all the buildings, structures, improvements, machinery, and other property of every character and description thereon situated, belonging to the seller. The title to the said real estate shall be a good marketable, fee simple title, free from all encumbrances, except such defects as may exist in the riparian rights above mentioned.

73 (b) any right title or interest of the seller in the Noreg Realty Company.

(c) All personal property of every character and description now situated and being on the property referred to in sub-section "a" hereof, and belonging to the seller, including all tools, machinery and appliances, furniture, fixtures, merchandise, steel, iron, copper and other materials of every character and description, and including any and all interest of the seller in all personal property now on said real estate free from all encumbrances.

Second. Provided that the seller is able to obtain permission from the United States Shipping Board Emergency Fleet Corporation for such assignment, the seller will assign at the time of the delivery of the deed and bill of sale hereinafter mentioned, any contracts or agreements which the seller now has with the said United States Shipping Board Emergency Fleet Corporation for the construction and

completion of four (4) so called twelve thousand five hundred (12,500) ton cargo ships, known as numbers 16-17-18 and 19 (Gloucester). Upon such assignment the buyer shall assume the entire performance of said contracts for said four (4) ships, and shall be liable for all cost and expense theretofore and thereafter paid and incurred for constructing and completing the same, including labor, material, and overhead, but not including any amortization or depreciation on said four (4) ships, and the Buyer shall be entitled to the benefit of all payments and advances theretofore and thereafter made on account of the said four (4) ships. It being intended that the seller shall not suffer any loss nor be under any expense or obligation in connection with the said four (4) ships, except amortization and depreciation on said four (4) ships, or receive any profit from said four (4) ships. The seller will endeavor to obtain permission for such assignment from the United States Shipping Board Emergency Fleet Corporation, and will obtain an audit of advances and expenditures made on account of said four (4) ships.

Third. The purchase price of all of the said real estate and personal property shall be four million two hundred thousand dollars (\$4,200,000) and shall be paid by the Buyer to the seller as follows: Seven hundred and fifty thousand Dollars (\$750,000) in cash, on signing of this agreement, two million two hundred and fifty thousand (\$2,250,000) Dollars, in cash on delivery of the deed and bill of sale hereinafter mentioned Six hundred thousand dollars (\$600,000) by one note, of the buyer payable twelve (12) months after the date of the delivery of the deed and bill of sale hereinafter mentioned, six hundred thousand dollars (\$600,000) by another note of the buyer, payable eighteen (18) months after the date of the delivery of the said deed and bill of sale. Both of the said notes shall bear interest at five per cent (5%) per annum, and be accepted for payment, or guaranteed by a bank or trust company satisfactory to the seller, or instead of such acceptance or guarantee, if agreeable to the seller, the buyer will pay all interest, commission, expense and other charges for negotiating said notes.

Fourth. The deed for the said real estate and a bill of sale for the said personal property duly executed by the seller shall be delivered to the buyer within thirty (30) days after the seller has made a settlement with the United States Shipping Board Emergency Fleet Corporation of all matters between the seller and the United States Shipping Board Emergency Fleet Corporation, which may be considered an encumbrance or lien on the said real estate and personal property, it being understood and agreed that unless such settlements are made and permission to assign the said four (4) contracts, as above mentioned, is obtained within sixty (60) days from the date hereof or unless the time is extended by the buyer the buyer shall be under no obligation to the seller and the seller shall not be under any obligation or liability to the buyer hereunder, except to return to the buyer any amount, with interest, received from the Buyer on account of the purchase price of said real estate and

personal property, and upon the prompt tender of such amount so received on account of the said purchase price, with interest, the seller, shall be, and hereby is, released and discharged from all liability to the buyer.

Fifth. The Buyer agrees that it will, if requested so to do by the seller, render all reasonable assistance in procuring a prompt settlement between the Seller and the Emergency Fleet Corporation and in procuring permission from the Emergency Fleet Corporation to the assignment above mentioned. All questions of title and of law are to be satisfactory to counsel for the buyer.

Sixth. The Buyer shall have the right to have two (2) representatives at the plant above mentioned of the seller during the existence of this agreement and every reasonable facility shall be afforded them by the seller to protect the interests of the buyer.

All risks or damages to the property, real and personal, to be borne and assumed by the seller, except, that the seller shall not be obliged to replace any buildings or property injured or destroyed by fire, but the value thereof, shall be deducted from the purchase price.

76 In witness whereof the parties hereto have caused this agreement to be signed by their duly authorized officers and their corporate seals to be hereunto affixed, the day first above written. [Seal of the Pusey and Jones Company.] Pusey and Jones Company, by Christopher Hannevig, President. [Seal of Baltimore Dry Docks & Shipbuilding Company.] Baltimore Dry Docks & Shipbuilding Company, by H. A. Evans, President.

Signed and delivered in the presence of: — — —.

STATE OF NEW YORK,
County of New York, ss:

On the 16th day of February in the year 1920 before me, Cyril R. Taylor, a Notary Public in and for the County aforesaid, personally came Christopher Hannevig, to me known, who being by me personally sworn did depose and say that he resides at Christiania, that he is the President of the Pusey & Jones Company, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. [Seal of Notary.] Cyril R. Taylor, Notary Public. Notary Public Kings Co. 147. Certificate filed N. Y. County No. —.

77 STATE OF NEW YORK,
County of New York, ss:

On the 11th day of February, in the year 1920, before me, — — — a Notary Public in and for the county aforesaid, personally came — — —, to me known who being by me duly sworn did depose and say that he resides in the City of Baltimore, Md.; that he is the President of the Baltimore Dry Docks & Ship Building Co.,

one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. — —, Notary Public.

STATE OF NEW YORK,
County of New York, ss:

On the — day of February, in the year 1920, before me, — —, a Notary Public in and for the county aforesaid personally came Christoffer Hannevig to me known, who being by me personally sworn did depose and say that he resides at Christiania, that he is the president of the Pusey & Jones Company, one of the corporations described in and which executed the above instrument, and he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. — —, Notary Public.

78 STATE OF MARYLAND,
City of Baltimore, ss:

On the 13th day of February, in the year 1920 before me Theodore C. Thomas a Notary Public in and for the city aforesaid, personally came Holden A. Evans to me known, who being by me duly sworn did depose and say that he resides in the city of Baltimore, Md.; that he is the President of The Baltimore Dry Docks & Ship Building Company, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Executive Committee of said corporation, and that he signed his name thereto by like order. (Seal of Notary.) Theodore C. Thomas, Notary Public. My commission expires May 3, 1920.

MOTION FOR APPOINTMENT OF RECEIVERS.

[Filed June 9, 1921.]

And Now, to wit, this ninth day of June, A. D. 1921, comes Hans Karluf Hanssen, the complainant in the above cause, by John P. Nields, Esq., his solicitor, and moves the Court to appoint one or more persons to be temporary receiver or receivers of and for the Pusey and Jones Company, respondent in the above cause, as prayed for in the bill of complaint herein. (Sgd.) John P. Nields, Solicitor for Complainant.

ORDER APPOINTING RECEIVERS.

[Filed June 9, 1921.]

And now, to wit, this ninth day of June, A. D. 1921, this cause came on to be heard at this term upon the sworn bill of complaint filed in said cause and upon the written motion of the complainant, by John P. Nields, Esq., his solicitor, filed therein, for the appointment of one or more persons as receiver or receivers of and for the respondent corporation, as prayed for in the bill of complaint filed herein, and it appearing to the Court that the immediate appointment of receivers of said respondent corporation is essential for the preservation of the estate of said respondent corporation and in order that such receivers may have an opportunity during the present term of this court to take such action touching the judgment for eight hundred thousand, one hundred twenty-five dollars (\$800,125), besides interest and costs in favor of the Baltimore Dry Docks & Shipbuilding Company, and against the respondent company recited in bill of complaint filed in this cause, as they may deem proper or as they may be advised, upon consideration thereof, it is ordered, adjudged and decreed by the Court as follows:

First. That Willard Saulsbury and Charles B. Evans, of Wilmington, Delaware, be and they are hereby appointed receivers of this Court of and for the said The Pusey and Jones Company, the respondent, to take charge of the estate, effects, business and affairs thereof, with power to prosecute and defend in the name of said corporation, or otherwise, all claims or suits, to appoint an agent or agents under them, and, subject to the approval of this court, to do all other acts which might be done by the said corporation and may be necessary and proper, and in so far as it may be necessary in their judgment, to continue the business of the respondent corporation, for the purpose of conserving the receivership estate, until the further order of this court.

Second. That the said receivers be and they are hereby authorized and empowered to take such action or proceedings with respect to the judgment entered by this court against The Pusey and Jones Company and in favor of the Baltimore Dry Docks & Shipbuilding Company in a suit instituted in this court, being No. 6 to the September Term, A. D. 1920, and recited in the bill of complaint filed herein, as they may deem proper or as they may be advised.

Third. That the said defendant corporation, its officers, agents and employees and any person, firm or corporation claiming by, through or under it, forthwith deliver over to the said receivers the property and effects of said corporation and all books and papers touching the same.

Fourth. That the said The Pusey and Jones Company, respondent, its officers, agents, attorneys, servants and employes and any person, firm or corporation, claiming by, through or under it, be and hereby are enjoined and restrained from in any manner selling, leasing, assigning, secreting, encumbering, transferring, or otherwise

disposing of the moneys, property and assets of the said respondent corporation, or in any manner de-roying, secreting or otherwise disposing of any of its books, papers, documents or securities, except to the receivers appointed herein, until the further order of this court;

81 Fifth. That the said receivers be and hereby are directed to open proper books of accounts wherein shall be stated the earnings, expenses, receipts and disbursements of their trust; to take and preserve vouchers for all payments made; to deposit all moneys coming into their hands in some national bank or trust company within the district of Delaware, and to report to this court the name of the depository selected for that purpose; and to file in this court, within three months from the date of their qualification, an inventory of all property of every description which shall have come into their possession, together with an account of their receipts and expenditures as such receivers, including a list of debts and credits which may be due from and to the estate in their charge, and thereafter to make and file quarterly accounts of receipts and disbursements during their continuance in office, or as this court may by further order direct;

Sixth. That the said receivers within five days from the date hereof and before entering upon their duties as such enter and file in this court a joint and several bond in the sum of fifty thousand dollars (\$50,000), with surety to be approved by the Court, conditioned that the said receivers shall well and truly perform the duties of their office and truly account for all moneys and property that may come into their hands as such receivers, and National Surety Company is hereby approved as surety in said bond;

Seventh. That within five days from the date hereof the said complainant file in this court a bond with surety to be approved by the Court, in the sum of ten thousand dollars, conditioned for the payment of such costs, fees and expenses of the receivers herein as may be hereafter ascertained and determined by the Court
82 to be properly payable by the complainant in this cause, and United States Fidelity & Guaranty Company is hereby approved as surety in said bond.

Eighth. It is further ordered by the Court that the said The Pusey and Jones Company show cause before this court at the United States Court Room in the City of Wilmington, in said district, on Saturday, the eighteenth day of June, A. D. 1921, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the said receivers should not be continued during the pendency of this cause; and further, that the complainant file in this court on or before June 14, 1921, at 12 o'clock noon, any affidavits and exhibits in support of the continuance of said receivers; and further, that the respondent, after being served with a copy of this order, have leave to file in this court on or before the seventeenth day of June, A. D. 1921, affidavits and exhibits in opposition thereto; and further, that the complainant have leave to file on or before the eighteenth day of June, A. D. 1921, affidavits and exhibits in reply to any affidavits and exhibits filed by the said respondent;

And it is further ordered by the court that notice of this order be forthwith given to the said respondent and to that end that the United States Marshal for this district do forthwith serve upon the respondent a copy of this order together with a copy of the bill of complaint filed in this cause. (Sgd.) Hugh M. Morris, J.

83 **MOTION OF RESPONDENT TO VACATE ORDER APPOINTING RECEIVERS.**

[Filed June 11, 1921.]

Comes the defendant above named by its solicitors, Robert Pennington and George N. Davis, and moves the Court for an order vacating and setting aside the order heretofore made by this Court in the above entitled cause, on the ninth day of June, A. D. 1921, appointing receivers for The Pusey and Jones Company. The grounds upon which the foregoing motion is based are as follows:

1. That the complainant in said cause is neither a stockholder nor a creditor of the said The Pusey and Jones Company, and is therefore without any legal right to maintain said suit.

2. That the allegations contained in said bill, touching the procurement of the judgment in the case of Baltimore Dry Docks and Shipbuilding Company v. The Pusey and Jones Company, and the previous relations alleged in said bill to have existed between the said Baltimore Dry Docks and Shipbuilding Company, Christoffer Hannevig and The Pusey and Jones Company, and alleged on information and belief, are wholly untrue and without foundation in fact.

3. That the allegations of the insolvency of the said The Pusey and Jones Company are untrue and without foundation in fact. (Sgd.) Robert Pennington. (Sgd.) George N. Davis, Solicitors for defendant.

84 **AFFIDAVIT OF WILLIAM G. COXE.**

[Filed June 13, 1921.]

William G. Cox, being duly sworn according to law, deposes and says that he is vice-president and general manager of The Pusey and Jones Company, the defendant in the above suit; that is has been vice-president and general manager of the business thereof since March, 1919, and as such has full knowledge of the financial condition of the company, its business prospect, and the present business now done by the said company. The deponent avers that there is now on hand approximately in cash and negotiable notes given by customers of the company, \$423,490.88, of which the sum of \$189,538.96 is cash and \$243,951.92 are notes which can be negotiated and discounted, and the proceeds thereof realized at any time.

The said corporation has now on hand contracts for paper-making machinery and miscellaneous castings, which will extend for a period

of at least four months, and that new contracts are continuing to be negotiated in the regular course of business, and there are now negotiations pending with parties in the City of New York for a contract for the making of paper-making machinery, aggregating the sum of approximately \$200,000. Your deponent avers that all purchasers of paper-making machinery are desirous of dealing with a thoroughly solvent and going concern, whose business will not be disturbed by the intervention of legal proceedings, which may lead to the liquidation of the company, inasmuch as the life of all paper-making machinery is long, and during the life of said machinery the purchasers thereof rely upon the original makers of the machinery to replace parts worn out or destroyed in the use of

85 the machinery. These parts must be secured from the original manufacturers of the machinery owing to the fact that said manufacturers are the only parties in possession of the patterns and drawings from which said parts can economically be manufactured. Your deponent further avers that the appointment of receivers by this Court, either temporarily or otherwise, will seriously prejudice the business interests of the defendant corporation, inasmuch as said corporation will not then be able to obtain any further orders and many of the negotiations now under way cannot be successfully carried out, because the prospective purchasers of the paper-making machinery to be manufactured by the defendant company will not enter into contracts for the purchase of such machines, unless they can be assured that the company will continue as a going concern, with ability to carry out in the future, the manufacture of the parts which said machines may need through wear and tear and other damage.

Your deponent further avers that the plant of the defendant company is at present employing 550 hands and operating at about 75 per cent of its capacity, and should it be impossible to secure further contracts for paper-making machinery, or should the securing of further contracts be essentially curtailed, there will be thrown out of employment in the City of Wilmington, a number of workmen which may be estimated at from 250 upwards, and in the opinion of your deponent, the above effects must inevitably follow the continuance of receivers in possession of the plant.

Your deponent further avers that the plant of the Pusey and Jones Company, the defendant corporation, is solvent and fully able to pay its obligations as they fall due in the due course of business; 86 stated in this affidavit, and that the present current indebtedness does not exceed the sum of \$25,000, and that the company has for some time past been discounting its bills for purchases. No other liabilities exist which are immediately due on the part of the company other than the current liabilities above mentioned. (Sgd.) William G. Cox.

Sworn to and subscribed before me this thirteenth day of June, A. D. 1921. (Sgd.) Samuel H. Baynard, Jr., Notary Public. [Seal.]

AFFIDAVIT OF LAURENCE LEONARD.

[Filed June 13, 1921.]

And now, to wit, this thirteenth day of June, A. D. 1921, personally appeared before me, Samuel H. Baynard, Jr., a notary public for the State of Delaware, Laurence Leonard, who being by me first duly sworn according to law, did depose and say that he is treasurer of The Pusey and Jones Company, the defendant in the above suit, duly elected and qualified to said office; that he has held said office since January, 1920; that as such, he has full knowledge of the accounts, finances, liabilities and assets of The Pusey and Jones Company; that the said The Pusey and Jones Company is a going concern, and has now on hand cash in the sum of, approximately, two hundred thousand dollars (\$200,000), and in negotiable notes of customers of the company of about two hundred thousand dollars (\$200,000), making a total of assets immediately available for the payment of current indebtedness, of the sum of
four hundred thousand dollars (\$400,000); that said assets
87 are held by him as treasurer of the company, under Article VIII of the agreement of The Pusey and Jones — and United States Shipping Board Emergency Fleet Corporation, said agreement bearing date the fourteenth day of May, 1918, copy of which is hereto attached. Your deponent avers that the sums of money above specified in cash or derivable from the discount of notes are immediately applicable for the payment of all current liabilities now existing, or which may occur in the usual course of business. (Sgd.) Laurence Leonard.

Sworn to and subscribed before me the day and year first above written. [Seal.] (Sgd.) Samuel H. Baynard, Jr., Notary Public. My commission expires September 10, 1922.

NOTE.—There is annexed to the foregoing affidavit a copy of agreement dated May 14, 1918, by and between The Pusey and Jones Company and United States Shipping Board Emergency Fleet Corporation. The same agreement being annexed to the affidavit of Frederic D. McKenney as Exhibit "A," is not reprinted here. (See record, p. 209.)

ORDER DENYING MOTION OF DEFENDANT.

[Entered June 13, 1921.]

Robert Penington, Esq., and George N. Davis, Esq., solicitors for said defendant, move the Court for an order vacating and setting aside the order heretofore made by this Court in the above entitled cause on the ninth day of June, A. D. 1921, appointing receivers for The Pusey and Jones Company, upon the grounds
88 set forth in their written motion filed in said cause. Arguments had and concluded.

Thereupon, it is ordered by the Court that the said motion be and hereby is denied.

AFFIDAVIT OF JOHN J. MASON.

[Filed June 15, 1921.]

Affidavit of John J. Mason for Filing in the Above Cause on Behalf of Complainant.

STATE OF DELAWARE,
New Castle County, ss:

John J. Mason, being duly sworn according to law, doth depose and say that he is thirty-nine years of age and resides at 1212 Lenox Avenue, Plainfield, New Jersey; that he is an accountant by occupation and has been such for upwards of eleven years last past; that from on or about the month of December, 1917, to the month of June, 1918, I was engaged in my capacity as an accountant in an investigation of the affairs of the Pennsylvania Shipbuilding Company, New Jersey Shipbuilding Company and The Pusey and Jones Company, which companies were thereafter merged into and with the respondent in the above cause; that on or about July, 1918, I became associated with Mr. Christoffer Hannevig as his comptroller and assigned to The Pusey and Jones Company wherein my duties were to audit the accounts and prepare balance sheets and negotiate settlement with the United States Shipping Board Emergency Fleet Corporation; that my association with The Pusey and Jones Company covers the period from December, 1917, to and including April,

89 1920; that during that period I examined the accounts of the Pennsylvania Shipbuilding Company, New Jersey Shipbuilding Company and The Pusey and Jones Company and had charge of the consolidation of these three companies into and with The Pusey and Jones Company as of December, 1917; that this work was finished on or about June, 1918, and thereafter I became associated with Mr. Christoffer Hannevig, substantially the owner of all of the stock of the respondent company, as comptroller and assigned to The Pusey and Jones Company wherein I continued to audit the accounts and prepare balance sheets and assist in negotiations with the United States Shipping Board Emergency Fleet Corporation as to the advances to be made to the company.

Sometime in the summer or fall of 1919 I was elected a member of the Board of Directors of the respondent company and continued as such until February 16, 1920.

I continued at The Pusey and Jones Company as comptroller and prepared balance sheets until about May, 1920.

The shipyards at Wilmington, Delaware and at Gloucester, New Jersey, had very nearly completed their program of shipbuilding for the United States Shipping Board Emergency Fleet Corporation and as they were unable to negotiate any new shipbuilding contracts with outside concerns, gradually decreased the force of employees and finally closed down all shipbuilding operations about September,

1920. Since then the Gloucester plant, representing approximately two-thirds of the total investment of The Pusey and Jones Company, has been closed down and the shipbuilding at the Wilmington plant has been practically closed down with the exception of repair work and some paper-making machinery manufacturing.

In the spring or early summer of 1919 there were proceedings brought in the Federal Court of Trenton, New Jersey, for the purpose of having receivers appointed for The Pusey and Jones Company, there being approximately three million dollars of outstanding liabilities due from The Pusey and Jones Company, which it was unable to meet. In this matter the United States Shipping Board Emergency Fleet Corporation advanced a sum of approximately \$2,750,000 to pay off these liabilities, which increased the total indebtedness of The Pusey and Jones Company to the United States Shipping Board Emergency Fleet Corporation by that amount.

Since that time the company has been unable to negotiate new shipbuilding business and has therefore been in a measure wasting its assets since the closing down of the shipbuilding industry, which constitutes approximately 90 per cent. of its operations and business.

The \$5,000,000 United States Shipping Board Emergency Fleet Corporation mortgage on the entire property of the respondent is a liability of the respondent which has not been paid in whole or in part. That all interest on the mortgage from the time interest accrued is still due and unpaid. That against this mortgage The Pusey and Jones Company has a claim against the Government for some thirty-four ships constructed and delivered. This claim is of very doubtful character on account of there being no definite terms stipulated as to the price of the ships. After making due allowance for any claim of The Pusey and Jones Company the United States Shipping Board Emergency Fleet Corporation claims that there is a net balance due to it of several million dollars in excess of the amount of the mortgage.

I have examined the nine promissory notes annexed to the bill of complaint in this cause. I know that these notes were set up as a liability of this company on its books and were so continued while I was connected with the affairs of that Company. These notes to the best of my knowledge and belief are unpaid and are now liabilities of the respondent.

That there are several claims outstanding some of which are represented by judgments arising from the building of plant additions in or about 1918, that are still outstanding and unpaid, including the mechanic lien suit of Lewis & Roth and John F. Pawling & Company, growing out of the building of additions to the plant in or about 1918, which are still outstanding and unpaid.

Christoffer Hannevig was adjudicated a bankrupt in the early part of February, 1921, by the District Court of the United States for the Southern District of New York.

In February, 1920, I was a member of the Board of Directors of the respondent company. I attended a meeting on February 16 of that board at 139 Broadway, New York City, New York on the day

When the contract for the sale of the Gloucester plant was submitted to the board and approved. On this occasion of the meeting of the board nothing was said with respect to the payment of any sum of money on account of this contract and I was in total ignorance of the fact that a check for \$750,000, drawn by the Baltimore Dry Docks and Shipbuilding Company had been received by Christoffer Hannevig, nor was there anything said nor did I know that any preferred or common stock of the respondent company owned or controlled by Christoffer Hannevig was to be or had been deposited with the Baltimore Dry Docks and Shipbuilding Company as collateral security for the return of the \$750,000. I was also in total ignorance that a receipt had been given by the Baltimore Dry Docks and Shipbuilding Company for said collateral.

2 Shortly after the board meeting of February 16, 1920, rumors were current that the Baltimore Dry Docks and Shipbuilding Company had made payment in accordance with the contract for the sale of the Gloucester yard.

I know of my own knowledge that no part of this payment was ever received by The Pusey and Jones Company or credited upon its books as a payment received by it up to and including the closing of the year 1920.

I have this day examined the photostatic copy of the check of the Baltimore Dry Docks and Shipbuilding Company dated February 11, 1920, to the order of The Pusey and Jones Company for the sum of \$750,000 and have examined the endorsement on the back of same, which is — The Pusey and Jones Company typewritten, signed Christoffer Hannevig, president. I am familiar with the minutes of January 7, 1920, wherein it was directed by the Board of Directors of The Pusey and Jones Company that the funds to be received by the company from contracts of any kind made with parties other than the United States Shipping Board Emergency Fleet Corporation should be deposited in the bank of North America of Philadelphia to the credit of The Pusey and Jones Company and that the endorsement on the check which I examined, shows that Christoffer Hannevig endorsed it and that it was subsequently endorsed by Hannevig and Company. That it is my opinion this check was endorsed by Christoffer Hannevig and in turn endorsed by his private bank, Hannevig and Company and turned over to the Empire Trust Company for purposes other than the uses of The Pusey and Jones Company. During my connection with The Pusey and Jones Company it had not been the practice of Christoffer Hannevig to receive any funds belonging to the company and this action on his part
33 by use of said endorsement was entirely out of the usual course of the business procedure of the company. All of which occurred on February 11, 1920, five days before the presentation of the contract to the Board of Directors.

A meeting of the Board of Directors on March 15, 1920, was held without me and my resignation that had been pending for some months was acted upon.

From my intimate acquaintance with the business affairs of the Pusey and Jones Company for the past three years, I am of opinion

that the best way to settle all disputes between the company and the United States Shipping Board Emergency Fleet Corporation and the Baltimore Dry Docks & Ship Building Company and conserve the interests of the stockholders and creditors is by the appointment of a Receiver. (Sgd.) John J. Mason.

Subscribed and sworn to before me this thirteenth day of June, A. D. 1921. (Sgd.) H. C. Mahaffy, Jr. [Seal.] Notary Public.

AFFIDAVIT OF F. W. G. UNGER VETLESEN.

[Filed June 15, 1921.]

Affidavit of F. W. G. Unger Vetlesen for Filing in the Above Cause in Behalf of the Complainant.

STATE OF DELAWARE,

New Castle County, ss:

F. W. G. Unger Vetlesen, being duly sworn according to law doth depose and say that he was born in the year 1889, in Christiania, Norway, and resides at 45 East 55th Street, New York City, New York; that he is an Engineer and Naval Architect by profession and a member of the Institute of Naval Architects and Marine Engineers of United States, being an associate member of the Institute of Naval Architects of London as well as a member of the Institute of City and Guild Institute of Technology of London; that from on or about the month of May 1917 to the month of September 1920, he has been connected with Mr. Christoffer Hannevig and his interests in various capacities as follows:

In May, 1917, Mr. Finn Hannevig, then vice-president of Christoffer Hannevig, Inc. with a view of securing my services as a naval architect for the various shipbuilding and shipping enterprises which his brother Christoffer Hannevig was planning and developing, entered into a contract with me and I was employed in the New Foundland Shipbuilding Company, Dominion Shipbuilding Company and various other industrial enterprises until January, 1918, when I was transferred to The Pusey and Jones Company as assistant secretary of the managing director and stayed in this capacity until the first of December, 1918, when about the middle of December I proceeded to Europe for the account of Christoffer Hannevig to analyze the shipbuilding situation and try to obtain new contracts. Returning in April, 1920, I was appointed technical assistant to the vice-president and general manager of The Pusey and Jones Company.

I am familiar with the plant and physical properties at Wilmington, Delaware, and Gloucester, New Jersey. I know that the major portion of the construction of the shipbuilding plants were built during the war in the period between the years 1917 and 1919; that certain equipment of a value exceeding a million dollars was used during that period in order to expedite shipbuilding which under conditions of building ships in a competitive market could have been

produced at much less cost and more efficiently and of more suitable types to operate.

55 The Gloucester property consisted of some one hundred and eighty-five acres of real estate on which two complete shipbuilding yards were built, consisting of the New Jersey yard, which contains five building ways with five overhead travelling gantry cranes, plate and angle shop, mold loft, offices, etc. The Pennsylvania yard which is adjoining consists of six building ways with six overhead gantry travelling cranes, plate and angle shops, mold loft, etc., and all necessary equipment for a complete yard. In addition to these are outfitting piers, a large machine shop, smithies, light plate shops, joiner shops, etc., making the two yards complete capable of finishing and equipping about twenty ships per year of an approximate dead weight tonnage of upwards of one hundred and fifty thousand dead weight tons, with a complement of about six thousand men under normal conditions. In addition to all these buildings a village was constructed during the war period consisting of some five hundred odd cottages for the workmen. The yard is also self-sustaining as regards its own power, as an electric power station of a capacity of three thousand k.w. was erected.

I am familiar with the conditions in the shipbuilding industry and can state of my own knowledge that all shipbuilding industry is practically at a standstill and has been in this condition for upwards of six months, and it is the general opinion of the people interested in shipbuilding that there will be no improvement in the conditions for a long period. I am familiar with estimates made from time to time of the marketable value of the plant and know that various experts have given it as their opinion that the plant has depreciated fifty per cent. of its original cost, without taking into consideration ordinary wear and tear. I am of opinion that the only way

the Gloucester properties could be marketed would be to dismantle the plant, sell machinery and material and equipment at whatever it would bring as second-hand or scrap value, and dispose of the real estate as such. All of the high expenditure in the reclaiming, filling and grading, as well as road building, together with dredging, is of intangible value. The Gloucester properties have been closed down since September of last year and it is a well known fact that even with the best of care in attempting to preserve the plant when it is idle, the waste and depreciation is above that of a plant in proper operation.

75 The properties of the Pusey and Jones Company at Wilmington are in a somewhat different position, as here they are not solely confined to shipbuilding. This plant has four shipbuilding ways with the necessary equipment to take care of the building of eight ships a year with the complement of about two thousand men. This plant, is a modern, up-to-date enterprise, under usual, well-established and recognized lines of an efficient shipbuilding concern. In addition to this shipbuilding equipment it has a fully up-to-date machine shop as well as a foundry and an old plate shop in which steam boilers have been built. This plant has in many years past been very successful in the making of paper machinery and sugar refining

machinery and is excellently equipped for these purposes. A complement of about five hundred men should be sufficient to take care of this line of business, which leaves the Wilmington plant when operated at full force, with a complement of about two thousand, five hundred men. However, I know that there is a great depression in the paper and pulp industry of to-day all over the world, and many of the large interests on the American Continent having paper and pulp enterprises, are running at greatly reduced output.

97 This applies more to shipbuilding industry where there have been practically no activities for the past six months, and it is my opinion that it will take years to come, before it will again be revived, as the market is glutted with bottoms. The shipbuilding operations were closed down at Wilmington the same time as in Gloucester.

I am familiar with the relations of the United States Shipping Board Emergency Fleet Corporation with the Pusey and Jones Company and that of Mr. Christoffer Hannevig and of the claimant and his associates, and I am of the firm belief that the only way to settle these matters and protect the interests of the stockholders and other creditors is by the appointment of a receiver. (Sgd.) G. Unger Vetlesen.

Subscribed and sworn to before me this fifteenth day of June, 1921. (Sgd.) Clarence Southerland, Notary Public. [Seal.]

STIPULATION.

[Filed June 15, 1921.]

It is hereby stipulated and agreed by and between Robert Pennington and George N. Davis, Solicitors for respondent and John P. Nields, solicitor for the complainant in the above entitled case, that the following books, records and documents shall and may be used in evidence at the hearing of the rule in the above case to show cause why the temporary receivers of the Pusey and Jones Company should not be continued, etc.: on Monday, June 20, 1921.

98 First. Original minute book of the Pusey and Jones Company marked "The Pusey and Jones Minute Book No. 3," now in possession of the temporary receivers of the Pusey and Jones Company.

Second. Complainant's Exhibit No. 2 being a photostatic copy of a check of the Baltimore Dry Dock and Ship Building Company dated February 11, 1920, for \$750,000 filed March 22, 1921, in the suit of the Baltimore Dry Dock and Ship Building Company against the Pusey and Jones Company, No. 6, September Term, 1920, in the District Court for the District of Delaware.

Third. Complainant's Exhibit No. 3 being a certified copy of a mortgage of the Pusey and Jones Company to the United States Emergency Fleet Corporation dated August 2, 1918, for \$5,000,000, filed in the above stated suit of the Baltimore Dry Dock & Ship Building Company v. The Pusey and Jones Company No. 6, Sep-

September Term, 1920, of the District Court for the District of Delaware. (See Record, p. 244.)

Fourth. The record of the District Court of the District of Delaware of a certain judgment for \$800,125 besides costs in the above stated suit of the Baltimore Dry Dock and Ship Building Company against the Pusey and Jones Company No. 6, September Term, 1920, of the said District Court for the District of Delaware. (Sgd.) Robert Penington, (Sgd.) George N. Davis, Solicitors for Respondent. (Sgd.) John P. Nields, Solicitor for Complainant.

99 **COPY OF "THE PUSEY AND JONES COMPANY
MINUTE BOOK No. 3."**

(Referred to in Paragraph First of Stipulation.)

A special meeting of the Board of Directors of The Pusey and Jones Company was held at 139 Broadway, New York City, on Wednesday, January 7, 1920, at three o'clock P. M.

Present: Christoffer Hannevig, President; William G. Cox, Charles Kimmich, Ralph J. M. Bullowa, Lester Ussing and John J. Mason, constituting a quorum. The president, Mr. Christoffer Hannevig, presided, and Meyer Kraus, Esq., was appointed secretary pro tem.

The minutes of the previous meeting were read and approved.

After discussion of matters affecting the interests of the company, on motion duly seconded and passed, it was

Resolved, that the funds to be received by the company from the contracts of any kind made with parties other than the Emergency Fleet Corporation, except for contracts for repair work to be financed under the agreement with the Fleet Corporation, shall be deposited in the Bank of North America, Philadelphia, or such other depository as may from time to time be designated by the Board of Directors, in the name of The Pusey and Jones Company, and such funds shall be subject to withdrawal only on the checks of The Pusey & Jones Company when signed by John J. Mason and countersigned by Christoffer Hannevig, William G. Cox or any
100 other officer of The Pusey & Jones Company, except the treasurer and the assistant treasurer.

On motion duly seconded and passed, it was

Resolved, that Section 17 of the By-Laws of the company be amended so as to read as follows:

The Treasurer shall keep full and accurate account of receipts and disbursements in books belonging to the company, and shall deposit all money and other valuable effects of the company in the name and to the credit of the company in such depositories as may be designated by the Board of Directors.

He shall disburse only such funds of the company as may be ordered by the Board of Directors, the president, or the general manager, taking proper vouchers for such disbursements; and shall render to the president, and to the directors at the regular meetings

of the Board, or whenever they may require, an account of all his transactions as treasurer; and a statement of the financial condition of the company; and at the regular meeting of the board in October, annually, a like report for the preceding fiscal year; except that the Board of Directors shall have authority to designate a person other than the treasurer to take charge of such funds as they shall, by resolution, direct; and except, also, that the Board of Directors, in their discretion, may designate a person other than the Treasurer to prepare a balance sheet of the company and to report to the Board of Directors on the accounting methods and cost system of the company.

On motion duly seconded and passed, it was

Resolved, that Section 26 of the By-Laws of the company be amended by adding the following:

"(4) Funds other than those received from the Fleet Corporation for building of ships, plant construction or repair work, shall
101 be deposited in such depositories as the Board of Directors
may direct, and shall be subject to the provisions of Section
17, as amended above, of these By-Laws."

On motion duly seconded and passed, it was

Resolved, that until the agreement of May 14, 1918, between The Pusey & Jones Company and The Emergency Fleet Corporation has been fully complied with by The Emergency Fleet Corporation and The Pusey & Jones Company, the duties of the Treasurer appointed pursuant to such agreement be confined solely to the disbursal of funds received by the company under said agreement.

On motion duly seconded and passed, it was

Resolved, that the office of Controller shall be created, and a person appointed to assume the duties of such office, which duties shall be as follows: To disburse, subject to the directions of the Board of Directors, all funds of the company, except those under the control of the treasurer; to keep the general accounts of the company and to prepare such reports as may be necessary or be required by the Board of Directors.

On motion duly seconded and passed, it was

Resolved, that the Board of Directors appoint Mr. John J. Mason, controller of the company until further ordered by the Board of Directors.

On motion duly seconded and passed, it was

Resolved, that the accounts of the company for the year 1919 be prepared by the controller of the company, and that the controller be, and he is hereby authorized and directed to submit
102 a tentative account and report for the year 1919, at the next meeting of the Board of Directors.

There being no further business, the meeting adjourned.
(Sgd.) Meyer Kraus, Secretary pro Tem.

A special meeting of the Board of Directors of The Pusey & Jones Company was held at 139 Broadway, New York City, on Monday, January 19, 1920, at 3 o'clock P. M.

Present: Christoffer Hannevig, Charles Kimmich, Ralph J. M. Bullowa, Lester Ussing and J. J. Mason, constituting a quorum. The President, Mr. Christoffer Hannevig, president, and Ralph J. M. Bullowa, Esq., was appointed Secretary pro tem.

The resignation of Mr. A. W. Vine as treasurer of the Company was presented to the meeting, and, upon motion duly made, seconded and carried, the resignation of Mr. Vine was accepted.

The managing director of the Company reported that the Fleet Corporation had notified the Pusey & Jones Company that it had designated Mr. Lawrence Leonard as Treasurer of The Pusey & Jones Company, pursuant to a certain agreement.

On motion, duly made, seconded and carried, it was

Resolved, that the action of the Fleet Corporation be and the same is hereby ratified, and Mr. Lawrence Leonard is made
103 Treasurer of The Pusey & Jones Company.

On motion the meeting adjourned.

Attest: Ralph J. M. Bullowa, Secretary pro Tem.

Minutes of a Special Meeting of the Board of Directors of the Pusey & Jones Company Held at 139 Broadway, New York City, on the 16th Day of February, 1920.

Present: Christoffer Hannevig, William G. Coxe, Ralph J. M. Bullowa, Lester Ussing and John J. Mason, being a majority of the Directors of the Company.

Mr. Christoffer Hannevig, President, presided, and Chester N. Farr, Jr., the Secretary of the Company, acted as Secretary of the meeting.

An agreement between this Company and the Baltimore Dry Docks and Shipbuilding Company, dated February 11, 1920, for the purchase of the plant of this Company at Gloucester, New Jersey, and certain personal property mentioned in the said Agreement, was submitted to the meeting.

After a discussion of the matter, the following resolutions were proposed, seconded and adopted:

Resolved: That the Agreement between this Company and the Baltimore Dry Docks & Shipbuilding Company, dated February 11, 1920, and the execution of the same by the President, be, and the same hereby are ratified, confirmed and approved; and
be it

104 Further Resolved: That the proper officers of this Company be, and they hereby are authorized and directed to execute, acknowledge and deliver the said Agreement on behalf of this Company and to do any and all acts and to make, execute and deliver any and all instruments in writing necessary, proper, or expedient to carry into effect the said Agreement.
A copy of the said agreement is hereto attached.*

*Same as Exhibit "G," attached to bill of complaint, and, therefore, not reprinted here. (See Record, p. 72.)

There being no further business the meeting adjourned. Chester N. Farr, Jr., Secretary.

Minutes of a Special Meeting of the Directors of Pusey and Jones Company Held at No. 139 Broadway, New York City, on the 15th Day of March, 1920, Pursuant to Due Notice.

Present: Messrs. Christoffer Hannevig, W. G. Cox, Charles Kimmich, R. J. M. Bullowa, being a majority of the Directors of the Company.

Mr. Hannevig, the President, presided, and Mr. Albert A. Springs was appointed Secretary of the meeting.

On motion duly made, seconded and carried, the following resolution was unanimously adopted.

"Resolved, that this corporation being the owner of the entire capital stock issued and outstanding of Patents Owning Company, does hereby give its consent to the dissolution of said Pat-
105 tents Owning Company, as provided under Section 39 of the General Corporation Laws of the State of Delaware, and the proper officers of this corporation be and they are hereby authorized, empowered and directed to execute whatever papers may be necessary to carry the said dissolution into effect."

On motion duly made, seconded and carried, the following preamble and resolution was unanimously adopted:

"Whereas, the President of this Company has deposited with the Baltimore Drydocks & Shipbuilding Company 3,850 shares of common stock and 20,000 shares of preferred stock of this Company, belonging to him personally, as security for the \$750,000 deposited by the Baltimore Dry Docks & Shipbuilding Company on the proposed sale of the plant of this Company at Gloucester City, New Jersey."

"Resolved, that subject to the approval of Counsel, the President of this Company be and hereby is authorized and designated as the officer of this Company to hold the said sum of \$750,000."

The Secretary of the meeting presented a proposed agreement between this Company and Christoffer Hannevig, A. S., of Christiania, Norway, dated March 15th, 1920, appointing Christoffer Hannevig, A. S., the agent of this Company to sell its products on the continent of Europe (including Scandinavia, Poland and Russia), the British Isles, and the Dominion of Canada, and to use and license others to use this Company's patents in the said countries.

The said agreement was read over by each Director and discussed, and

On motion duly made, seconded and carried, the following resolution was unanimously adopted. Mr. Christoffer Hannevig
106 not voting and taking no part in the adoption of this resolution:

"Resolved, that the proposed agreement with Christoffer Hannevig, A. S., dated March 15th, 1920, presented to the Directors at this meeting be and the same hereby is approved and accepted, and that the Vice-President and the Secretary of the Company, be and

hereby are authorized and directed to make, execute and deliver the said agreement on behalf of this Company."

There being no further business the meeting adjourned. (Sgd.) Albert A. Springs, Secretary of the Meeting.

We, the undersigned, being all the directors of the Pusey & Jones Company do hereby waive notice of the time, place and purpose of a special meeting of the directors of said Company and do hereby fix the 15th day of March, at 1.30 o'clock P. M. as the time, and #139 Broadway, New York City, as the place of said meeting, the purpose of said meeting being to authorize the President to hold the \$750,000 deposited by the Baltimore Dry Dock and Shipbuilding Company on the purchase of the Plant at Gloucester, New Jersey and to consider and act upon a proposition to appoint an agent of the Company to sell its products abroad and to manufacture its machines abroad.

Dated New York, March 15th, 1916. (Sgd.) Christoffer Hannevig, John J. Mason, Chas. Kimmich, W. G. Coxe, Ralph J. M. Bullowa, Lester Ussing.

107 Agreement made this 15th day of March, 1920, by and between Pusey & Jones Company, a corporation of the State of Delaware, hereinafter referred to as "Pusey & Jones," party of the first part, and Christoffer Hannevig, Attissel-kab, of Christiania, Norway, hereinafter referred to as "Christoffer Hannevig, A. S.," party of the second part.

Witnesseth: as follows—

That for and in consideration of the mutual covenants herein contained and the sum of Ten Dollars (\$10) and other valuable consideration to Pusey & Jones in hand paid by Christoffer Hannevig, A. S., the receipt whereof is hereby acknowledged.

1. Pusey and Jones does hereby appoint Christoffer Hannevig, A. S., its duly authorized agent, and does hereby give and grant to Christoffer Hannevig, A. S., the exclusive right and privilege as its agent, irrevocable for a period of ten years from the date hereof, to sell or otherwise dispose of any and all the products of Pusey & Jones including ships, machinery, machines and all other equipment manufactured or assembled by Pusey & Jones, for use or operation in or from the continent of Europe (including Scandinavia, Poland and Russia), and the British Isles.

2. Pusey & Jones will use its best efforts to fill promptly all acceptable orders received from or thru Christoffer Hannevig, A. S., for its said products, and will ship and consign the said products to or upon the request of Christoffer Hannevig, A. S.

3. On any and all sales of the said products except ships, made by or thru Christoffer Hannevig, A. S., Pusey & Jones will pay to

Christoffer Hannevig, A. S., a commission of five per centum
108 (5%) of the purchase price of the said products. On any and all sales of ships made by or thru Christoffer Hannevig, A. S., Pusey & Jones will pay to Christoffer Hannevig, A. S., a commission of one per centum (1%) of the purchase price of said

ships unless otherwise agreed upon by the parties hereto. The agency herein created being an exclusive one, Christoffer Hannevig, A./S., shall be entitled to receive from Pusey & Jones the commissions above mentioned, upon the sales of any and all products of Pusey & Jones, in or for any of the territories aforesaid during the ten years above mentioned, whether such sales be made by or thru Christoffer Hannevig, A./S., or otherwise. Pusey & Jones shall make out and render to Christoffer Hannevig, A./S., on the first day of each month, and more often if so requested, a full and complete report of all sales made the month previous, in or for the territories aforesaid, or since the last report made, and shall accompany said report with a full settlement in accordance with this agreement, for all products so reported sold said settlement to be made with cash in New York funds.

4. Christoffer Hannevig, A./S., accepts such agency and right and privilege to sell the said products and will use its best efforts to make sales of the said products in the territories aforesaid and to responsible purchasers, but Christoffer Hannevig, A./S., will not guarantee payment or collection from purchasers unless otherwise agreed upon by the parties hereto.

5. The said Pusey & Jones Company does hereby sell, assign, and transfer unto Christoffer Hannevig, A./S., its licensees, successors and assigns, the exclusive right, and privilege to manufacture, sell, and to license others to manufacture and sell the machines, machinery and all other devices contained in any of the inventions, letters patent, patented improvements and processes, owned or possessed by the said Pusey & Jones Company, for, to and on the continent of Europe (including Scandinavia, Poland and Russia), and the British Isles, the same to be held and enjoyed by Christoffer Hannevig, A./S., for its own use and behoof, and for the use and behoof of its licensees, successors and assigns for a period of ten years from the date hereof, as fully and entirely as same would have been held and enjoyed by the said Pusey & Jones Company on the continent of Europe (including Scandinavia, Poland and Russia) and the British Isles.

6. Christoffer Hannevig, A./S., shall pay to Pusey & Jones Company as a license fee two and one half per cent ($2\frac{1}{2}\%$) of the net profits collected by Christoffer Hannevig, A./S., within thirty (30) days after such collection upon every machine, device, or piece of machinery manufactured by Christoffer Hannevig, A./S., or its licensees, successors and assigns containing the inventions, letters patent and patented improvements and processes aforesaid.

7. Pusey & Jones Company does hereby covenant and agree with Christoffer Hannevig, A./S., that Pusey & Jones Company, its successors and assigns will from time to time on demand of Christoffer Hannevig, A./S., its licensees, successors and assigns, furnish copies of plans and specifications for the machines, machinery and other devices above mentioned, and will duly make, execute and acknowledge, and deliver, all such further acts, deeds, conveyances, assignments and assurances requested by Christoffer Hannevig, A./S., its

licensees, successors or assigns, for effectuating the intention of this agreement.

110 In witness whereof the said parties have caused this agreement to be signed by their duly authorized representative on the day first above mentioned. Pusey and Jones Company, by _____, Christoffer Hannevig, Aktieselskab, by _____.

A special meeting of the Board of Directors of The Pusey & Jones Company was held at 139 Broadway, New York, N. Y., on the first day of April, 1920, at twelve o'clock noon. There were present, Messrs. Christoffer Hannevig, Charles Kimmich, R. J. M. Bullowa and Lester Ussing, being a majority of the Directors.

Mr. Christoffer Hannevig, President, presided.

The minutes of the meeting of February 16, 1920, were read and approved.

The minutes of the meeting of March 15, 1920, were read and on motion, the words "pursuant to waiver of notice signed by all directors of the Company except Mr. Christoffer Hannevig, Sr.," in the first paragraph thereof, were struck out, and the words "pursuant to due notice" inserted in place thereof.

The resignation of Mr. John J. Mason, as a member of the Board of Directors, was submitted to the meeting, and on motion duly accepted. The resignation is hereto attached.

On motion, duly seconded, Mr. Lawrence Leonard was elected a Director of the Company to succeed Mr. John J. Mason, resigned.

111 There being no further business the meeting adjourned.
Attest. (Sgd.) Chester H. Farr, Jr., Secretary.

Derwen Road, Cynwyd, Pa., Nov. 7, 1919.

DEAR MR. HANNEVIG: In accordance with your request I am handing you herewith my resignation in the Board of The Pusey and Jones Co. and will be in 139 Bway Monday morning. Yours very truly, (Sgd.) John J. Mason. Christoffer Hannevig, Esq., 139 Broadway, New York, N. Y.

MINUTES.

August 24th, 1920.

A special meeting of the Board of Directors of the Pusey & Jones Company was held on the 24th day of August, 1920, at 2 P. M., at 139 Broadway, New York City.

Present: Christoffer Hannevig, William G. Coxe, Charles Kimmich and Lester Ussing. Christoffer Hannevig, president of the Company presided.

The request of the Baltimore Dry Docks & Ship Building Company for the transfer of certain shares of preferred and common capital stock of the Pusey & Jones Company to the name of
112 the Baltimore Dry Docks & Ship Building Company was submitted to the meeting and the following motion, duly seconded, carried:

Resolved, that the request of the Baltimore Dry Docks & Ship Building Company to the Pusey & Jones Company to transfer to the Baltimore Dry Docks & Ship Building Company 20,000 shares of the preferred capital stock (Certificates A-5, A-6, A-13, and A-14) and 3,850 shares of the common capital stock (Certificate #55) of the Pusey & Jones Company on the books of said Company be referred to the Managing Director and General Counsel of the Pusey & Jones Company for advice thereon and a full report of all facts and circumstances in connection therewith be submitted to the Board at its next meeting on August 31st, 1920, for final action thereon.

On motion, duly seconded, it was moved, seconded and carried that William G. Coxe, Vice-President of the Company, be given authority to sell the suction dredge, now the property of the Pusey & Jones Company on such terms as he may deem fit, subject to the approval of the President of the Company.

On motion, the meeting adjourned to meet again at 2 P. M. August 31st, 1920, at 139 Broadway, New York City. (Sgd.) Chester H. Farr, Jr., Secretary.

MINUTES.

August 31st, 1920.

A special meeting of the Board of Directors of the Pusey & Jones Company was held on the 31st day of August at 2 P. M. at 139 Broadway New York City.

Present: Christoffer Hannevig; William G. Coxe, Charles Kimnich, and Lester Ussing. Christoffer Hannevig, president of the Company, presided.

113 There was presented at the hearing, a letter from Christoffer Hannevig, dated August 26th, 1920, addressed to the Pusey & Jones Company and the Board of Directors and Executive Officers, protesting against the transfer of certain shares of preferred and common stock of the Company to the Baltimore Dry Docks and Ship Building Company as owner, copy of which letter is subsequently set forth in a resolution passed in this meeting and the original is attached to these minutes.

In accordance with the request made in the last meeting, the Managing Director and General Counsel of the Pusey & Jones Company made a report to the Board of Directors in regard to the facts and circumstances attending the request to transfer. After discussion, the following resolution was adopted:

"Whereas The Pusey & Jones Company has received a request from the Baltimore Dry Docks & Shipbuilding Company asking the Pusey & Jones Company to transfer to the Baltimore Dry Docks & Shipbuilding Company as owner thereof, 20,000 shares of the preferred stock of the Pusey & Jones Company, now outstanding in Certificates A5, A6, A13, and A14, and 3,850 shares of the Common Stock of the Pusey & Jones Company, now outstanding in Certificate #55, the said shares of stock now registered on the books of the Pusey & Jones Company in the names of the following owners:

Preferred Stock:

Christoffer Hannevig, Inc. 10,000 shares.
 Christoffer Hannevig 10,000 shares.

Common Stock:

Ralph James M. Bullowa 3,850 shares.

and

Whereas The Pusey & Jones Company has received notice from Christoffer Hannevig, acting for himself and for Ralph James M. Bullowa and Christoffer Hannevig, Inc., that the said Baltimore Dry Docks & Shipbuilding Company has no title to the said shares as owners, but is only the pledgee of said stock, a copy of which notice is herein set forth as follows:

N. Y., August 26th, 1920.

Board of Directors and Executive Officers the Pusey & Jones Company.

DEAR SIR: I understand that a demand has been made upon you by the Baltimore Dry Docks & Ship Building Company to transfer to its name the shares of preferred stock represented by certificates A-5, A-6, A-13, and A-14; and shares of common stock represented by certificates No. 55.

These shares of stock are shares of stock to which I personally claim title as standing in my name or in the name of my nominee. Title to this stock is claimed by the Baltimore Dry Docks & Ship Building Company as the result of a sale made by it of the stock as pledgee on the 10th day of August, 1920. The Baltimore Dry Docks & Ship Building Company was pledgee of this stock and purchased the stock at its own sale, a proceeding wholly unjustified and not in accordance with the terms of the agreement under which the stock was pledged.

I, therefore, desire to call attention to the fact that the sale of said stock made by the Baltimore Dry Docks & Ship Building Company and under which the Baltimore Dry Docks & Ship Building Company claims title is an invalid sale and as such has conferred no title upon the Baltimore Dry Docks & Ship Building Company.

115 If a transfer of this stock is made upon the books of the Company by the Directors or Executive Officers thereof, I shall hold the Company responsible as a corporation and the Directors and Officers individually for any damage that may result to me from the transfer. Very truly yours, (Sgd.) Christoffer Hannevig, Individually and for Christoffer Hannevig, Inc., and for Ralph James M. Bullowa.

And Whereas counsel for the Company has advised the Board, and the Board is of the opinion that the position taken by the said Christoffer Hannevig, Christoffer Hannevig, Inc., and Ralph James M. Bullowa, is correct,

Now therefore, be it resolved that the Pusey & Jones Company refuse to make transfer of 20,000 shares of the preferred stock of the Company standing on the books of the Company as follows:

Certificate A5—5,000 shares in the name of Christoffer Hannevig, Inc.,

Certificate A6—5,000 shares in the name of Christoffer Hannevig, Inc.,

Certificate A13—5,000 shares in the name of Christoffer Hannevig,

Certificate A14—5,000 shares in the name of Christoffer Hannevig,

and of the 3,850 shares of Common stock of the Company, being certificate #55, registered in the name of Ralph James M. Bullock, to the Baltimore Dry Docks & Shipbuilding Company as the owner of said shares.

116 Further Resolved that the Secretary of the Company be authorized to notify the Baltimore Dry Docks & Shipbuilding Company of this action on the part of the Board.

Christoffer Hannevig submitted to the Board the following letter:

139 Broadway,

New York, August 31st, 1920.

The Pusey & Jones Company.

DEAR SIR: In consideration of the payment by the Pusey & Jones Company of any sum not in excess of \$250,000 of the \$750,000.00 indebtedness now owing by the Pusey & Jones Company to the Baltimore Dry Docks & Shipbuilding Company, and the further payment thereafter of the balance due on said \$750,000.00, I agree that upon the release of the shares of Preferred and Common Stock of the Pusey & Jones Company, now deposited with the Baltimore Dry Docks & Shipbuilding Company as a pledge for the payment of said debt, that I will deposit said shares of the Pusey & Jones Company as collateral for the payment to the Pusey & Jones Company of the sum of \$750,000.00 now owing by me to the said Company.

Any pro rata portion of this indebtedness of \$750,000.00 which should be paid by me personally to the Baltimore Dry Docks & Shipbuilding Company, will permit me to reduce the amount of said stock to be deposited with the Pusey & Jones Company under this
117 agreement in an amount proportionate with the payment which I may make on said indebtedness. Yours very truly,
(Sgd.) Christoffer Hannevig. CH H.

The original of this letter is attached to the minutes.

On motion duly seconded, it was resolved that the President and Treasurer of the Pusey & Jones Company be authorized to draw a check upon the funds of the Company not in excess of \$250,000.00, payable to the order of the Baltimore Dry Docks & Shipbuilding Company, the said check to be delivered to the Baltimore Dry Docks & Shipbuilding Company on consideration of its consenting to the terms of the undertaking set forth in the letter written by the General Manager to the Baltimore Dry Docks & Shipbuilding Company

(copy of which letter is attached to these minutes) or on such modification of the terms thereof as may be satisfactory to the President and Managing Director of the Pusey & Jones Company.

It is moved, seconded and carried that William G. Coxe, Vice-President, be authorized to make the best lease possible of the Pennsylvania Railroad property adjoining the Wilmington plant.

It is moved, seconded and carried that William G. Coxe, Vice President, of the Pusey & Jones Company be authorized to sell the steel purchased for the 8,400 ton tankers at the best price possible. (Sgd.) Chester N. Farr, Jr., Secretary.

118

N. Y., August 26th, 1920.

Board of Directors and Executive Officers the Pusey & Jones Company.

DEAR SIR: I understand that a demand has been made upon you by the Baltimore Dry Docks & Ship Building Company to transfer to its name the shares of preferred stock represented by certificates A-5, A-6, A-13 and A-14; and shares of common stock represented by certificate No. 55.

These shares of stock are shares of stock to which I personally claim title as standing in my name or in the name of my nominee. Title to this stock is claimed by the Baltimore Dry Docks & Ship Building Company as the result of a sale made by it of the stock as pledgee on the 10th day of August, 1920. The Baltimore Dry Docks & Ship Building Company was pledgee of this stock and purchased the stock at its own sale, a proceeding wholly unjustified and not in accordance with the terms of the agreement under which the stock was pledged.

I, therefore, desire to call attention to the fact that the sale of said stock made by the Baltimore Dry Docks & Ship Building Company and under which the Baltimore Dry Docks & Ship Building Company claims title is an invalid sale and as such has conferred no title upon the Baltimore Dry Docks & Ship Building Company.

If a transfer of this stock is made upon the books of the Company by the Directors or Executive Officers thereof, I shall hold the Com-

pany responsible as a corporation and the Directors and Officers individually for any damage that may result to me from the transfer. Very truly yours, (Sgd.) Christoffer Hannevig, Individually and for Christopher Hannevig, Inc., and for Ralph James M. Bullowa.

139 Broadway,

New York, August 31st, 1920.

The Pusey & Jones Company.

DEAR SIR: In consideration of the payment by the Pusey & Jones Company of any sum not in excess of \$250,000.00 of the \$750,000.00 indebtedness now owing by the Pusey & Jones Company to the Baltimore Dry Docks & Shipbuilding Company, and the further payment thereafter of the balance due on said \$750,000.00, I agree that upon the release of the shares of Preferred and Common Stock of

the Pusey & Jones Company, now deposited with the Baltimore Dry Docks & Shipbuilding Company as a pledge for the payment of said debt, that I will deposit said shares of the Pusey & Jones Company as collateral for the payment to the Pusey & Jones Company of the sum of \$750,000.00 now owing by me to the said Company.

Any pro rata portion of this indebtedness of \$750,000.00 which should be paid by me personally to the Baltimore Dry Docks & Shipbuilding Company, will permit me to reduce the amount of said stock to be deposited with the Pusey & Jones Company under this agreement in an amount proportionate with the payment which I may make on said indebtedness. Yours very truly,
(Sgd.) Christoffer Hannevig. C. H./H.

Copy.

August 27th, 1920.

The Baltimore Dry Docks & Ship Building Company, J. M. Willis,
Vice President & General Manager, Baltimore, Maryland.

DEAR SIR: We beg leave to submit to your Company the following proposition with regard to the payment of \$750,000.00 now owing by the Pusey & Jones Company to the Baltimore Dry Docks & Ship Building Company plus interest thereon; this indebtedness being an obligation of the Pusey & Jones Company to pay back to the Baltimore Dry Docks & Ship Building Company, the money advanced by the Baltimore Dry Docks & Ship Building Company, under contract dated February 11th, 1920.

The Pusey & Jones Company will pay \$250,000.00 on account of this indebtedness on or about the 10th day of September, 1920. On payment of this sum, the Baltimore Dry Docks & Ship Building Company will agree to extend the time for the payment of the balance due to-wit: \$500,000.00 and accrued interest, to January 10th, 1921. The Pusey & Jones Company to be given the privilege of anticipating the time of payment.

The Baltimore Dry Docks & Ship Building Company will further relinquish any title it may claim to the preferred and common stock of the Pusey & Jones Company (preferred stock certificate A-5, A-6, A-13 and A-14, and common stock certificate #55) and will continue to hold said stock as collateral for the payment of the \$500,000.00 with accrued interest under the same terms and conditions as specified in the receipt for said stock given by it to Christoffer Hannevig on February 11th, 1920.

The Baltimore Dry Docks & Ship Building Company will, of course, withdraw its request to have said stock registered in its own name.

It is understood that this proposition, should your Company express a willingness to accept it, is made subject to its subsequent confirmation by the Board of Directors of the Pusey & Jones Company. Very truly yours, The Pusey & Jones Company, by ———

Minutes of a Special Meeting of the Board of Directors of the Pusey & Jones Company Held at 139 Broadway, New York City, on the 13th Day of September, 1920.

Present: Messrs. Christoffer Hannevig, Lester Ussig.

Mr. Hannevig, the President of the Company, presided, and in the absence of the Secretary Mr. Ussig was appointed Secretary pro tem of the meeting.

There being no quorum of Directors present, the meeting was adjourned to September 14th, at 2 o'clock P. M., at the same place. (Sgd.) Lester Ussig, Secretary pro Tem.

122

September 14th, 1920.

A special adjourned meeting of the Board of Directors of the Pusey & Jones Company was held on Tuesday, September 14th, 1920, at 139 Broadway, New York, at 2:00 P. M.

The following directors were present:

William G. Coxe, Charles Kimmich, Laurence Leonard, and Lester Ussig.

In the absence of the President, William G. Coxe, Vice-President of the Company presided.

The minutes of the meeting of August 31st, 1920, were read and approved.

The Secretary submitted to the meeting a letter from the Treasurer in response to the resolution of the last meeting authorizing the Treasurer to draw a check to the order of the Baltimore Dry Docks & Ship Building Company. The letter as submitted is hereto attached.

On motion duly seconded, it was:

Resolved that the President and Managing Director of the Company be authorized to take such steps as they deem fit for the protection of the Company in regard to procedure and defenses with respect to the present dispute between the Pusey & Jones Company and the Baltimore Dry Docks & Ship Building Company.

On motion the meeting then adjourned. (Sgd.) Chester N. Farr, Jr., Secretary.

123 Address all communications to the company.

The Pusey & Jones Company, Pennsylvania and New Jersey Yards, Gloucester City, N. J., Successors to Pennsylvania Shipbuilding Co., New Jersey Shipbuilding Co.

Cable Address "Glasco."

In reply refer to ———.

Gloucester City, N. J., September 10, 1920.

The Board of Directors of the Pusey & Jones Company.

DEAR SIR: In response to your resolution authorizing me to draw a check on the funds of the Company not in excess of \$250,000.00,

payable to the order of the Baltimore Dry Docks & Shipbuilding Company, I desire to advise you that I cannot as Treasurer of the Company, sign any check for this purpose. Very truly yours, The Pusey & Jones Company. (Sgd.) Laurence Leonard, Treasurer.

October 8th, 1920.

A special meeting of the Board of Directors of the Pusey & Jones Company was held on Friday, October 8th, 1920, at the apartments of the President at 850 Park Avenue, New York City, at 2.00 P. M.

The following Directors were present:

Christoffer Hannevig, Charles Kimmich, Laurence Leonard, and Lester Ussing.

124 The president, Christoffer Hannevig presided.

The minutes of the meeting of September 14th were read and approved.

General Counsel of the Company outlined to the Board the nature of the answer to be filed on behalf of the Company in the suit brought at Wilmington, Delaware, by the Baltimore Dry Docks & Ship Building Company.

The following resolution was offered:

Resolved that any proper officer of the Pusey & Jones Company be authorized to execute an answer to the equity suit brought against the Pusey & Jones Company by the Baltimore Dry Docks & Ship Building Company at Wilmington, Delaware, said answer to be made along the lines laid down by General Counsel.

Mr. Leonard moved that the vote on the resolution be recorded. Vote was accordingly taken on the resolution as follows:

Mr. Kimmich, aye; Mr. Ussing, aye; Mr. Leonard, no.

The resolution declared carried.

On motion the meeting adjourned. (Sgd.) Chester N. Farr, Jr., Secretary.

Minutes of a Special Meeting of the Board of Directors of Pusey & Jones Company Held at the Apartment of Mr. Christoffer Hannevig, No. 850 Park Avenue, Borough of Manhattan, City of New York, on Monday, February 14th, 1921, at 9.30 o'clock in the Forenoon, Pursuant to Notice.

125 Present: Messrs. Lawrence Leonard, Charles Kimmich, Lester Ussing, Christoffer Hannevig, being a majority of the Board and a quorum.

The President, Mr. Hannevig, presided and the Secretary, Mr. Farr, acted as secretary of the meeting.

The Secretary thereupon read to the meeting the minutes of a special meeting of the Board of Directors held on October 8th, 1920, and the same were approved.

Mr. Meyers, Counsel for Henry A. Wise, Receiver of Christoffer Hannevig, made the following statement to the meeting: The financial affairs of the Pusey & Jones Company were discussed by the Receiver and his counsel, including particularly the recent attempt

of the Baltimore Dry Docks & Shipbuilding Company to foreclose the stock of the Pusey & Jones Company, which had been put up with the Baltimore Dry Docks & Shipbuilding Company as collateral security. Mr. Meyers informed the Board that he had had a very favorable talk with Mr. George Weems Williams, of Baltimore, and that Mr. Williams had stated that it was not his purpose to take any steps at the present time against the Pusey & Jones Company, and he promised to go into conference with Mr. Wise and Mr. Meyers about Wednesday, the 16th instant.

Upon motion of Mr. Ussing, seconded by Mr. Kimmich (Mr. Leonard not voting), it was

Resolved, that George Gordon Battle, Esq., and Chester N. Farr, Jr., Esq., counsel for the company, or either of them, be, and they hereby are authorized to take such action as may be necessary growing out of the situation above referred to, including the right
126 to consent on behalf of the company to the appointment of receivers in equity or in bankruptcy, should such a course be deemed necessary by them or either of them in the interest of the stockholders of the corporation, it being the purpose of this resolution to allow Mr. Battle to act in the absence of Mr. Farr, or to allow Mr. Farr to act in the absence of Mr. Battle.

On motion duly made and seconded, the meeting thereupon adjourned to Friday, February 18, 1921, at 3 P. M., at No. 850 Park Avenue, New York City. (Sgd.) Chester N. Farr, Jr., Secretary.

Special adjourned meeting of the Board of Directors of the Pusey & Jones Company was held on Friday, February 18, 1921, at 3.00 P. M., at 850 Park Avenue, New York City; there being no quorum present, the meeting adjourned Sine Die. (Sgd.) Chester N. Farr, Jr., Secretary.

A special meeting of the Board of Directors of the Pusey & Jones Company was held on Monday, March 21st, 1921, at 4.30 P. M., at the office of Henry A. Wise, Esq., 15 William Street, New York City.

Present: William G. Coxe, Laurence Leonard, Charles Kimmich, Lester Ussing.

Mr. William G. Coxe, Vice President, in the absence of the President, presided as Chairman of the meeting.

127 The resignation of Ralph James M. Bullowa, as Director of the Pusey & Jones Company was submitted to the Meeting, and on motion, accepted.

The resignation of Christoffer Hannevig, as Director and President of the Pusey & Jones Company was submitted to the meeting, and on motion was accepted. These resignations are hereto attached.

Hartwell Cabell was nominated as Director, in place of Christoffer Hannevig, resigned.

The Secretary informed the Meeting that Mr. Cabell was the owner and holder of three shares of stock of the Pusey & Jones Company and therefore qualified to serve as a Director.

There being no other nominations, Mr. Hartwell Cabell, on mo-

tion, was unanimously elected a Director of the Pusey & Jones Company.

Mr. Hartwell Cabell was thereupon introduced to the Board, and took his seat as Director. The Secretary submitted to the Board the resignation of Lester Ussing as Director of the Pusey & Jones Company and on motion the resignation of Lester Ussing was accepted. The resignation is hereto attached.

Henry A. Wise was nominated as Director to succeed Lester Ussing.

The Secretary informed the meeting that Mr. Wise was the owner and holder of three shares of stock of the Pusey & Jones Company and therefore, qualified to act as Director. On motion, Henry A. Wise was unanimously elected a Director of the Pusey & Jones Company.

On motion duly seconded, it was:

Resolved that the resolution passed at the Meeting of February 14th, 1921, authorizing George Gordon Battle and Chester N. Farr, Jr., to act for the company in the matter of a receivership, be and the same is hereby repealed.

128 On motion duly seconded and carried (Mr. Leonard not voting) it was:

Resolved that the Board of Directors hereby approves the memorandum of the plan of action with respect to the Pusey & Jones Company adopted at a meeting of the representatives of the various interests involved, in the office of the Superintendent of Insurance in the State of New York, on Friday, March 18, 1921, a copy of the memorandum so approved being attached to these minutes.

On motion duly seconded, it was further resolved that in accordance with the provisions of said memorandum, the Board hereby approves the selections of Henry A. Wise and George Weems Williams, or their successors, as a committee of two to have full charge of the negotiations and settlements of all steps looking towards the claims of the Pusey & Jones Company against the Government or the United States Shipping Board, Emergency Fleet Corporation.

On motion duly seconded, it was resolved that transfer of the fifteen thousand shares of Preferred Stock of the Company, which has been demanded by the Union National Bank of Wilmington, Delaware, to John A. Hurley, represented by William S. Hilles, Esq., be and the same is hereby refused because of the notice given to the Company of other claims on the said stock; and the general counsel for the company is hereby instructed to notify counsel for John A. Hurley and the Union National Bank of Wilmington, Delaware, of this decision of the Board of Directors.

Charles Kimmich submitted to the Meeting his resignation as Director of the Pusey & Jones Company, which resignation is hereto attached. (Sgd.) Chester N. Farr, Jr., Secretary.

129 Telephone Broad 5488. Cable Address Ralbul.

Ferdinand E. M. Bullowa, Emilie M. Bullowa, Ralph James M. Bullowa, Counsellors at Law, 32 Broadway, New York.

September 7, 1920.

Chester N. Farr, Jr., Esq., Secretary of the Pusey & Jones Co., 1018 Real Estate Trust Bldg., Philadelphia, Penna.

DEAR SIR: Kindly accept my resignation as a director of the Pusey & Jones Company. Yours very truly, (Sgd.) Ralph James Bullowa. RJMB:IB.

New York, March 17, 1921.

The undersigned, Christoffer Hannevig, hereby resigns the office of President of The Pusey & Jones Company, such resignation to take effect when the same is presented at and accepted by the Board of Directors of such Corporation, at any meeting of such Board. (Sgd.) Christoffer Hannevig. Witness: Chas. Kimmich.

New York, March 17, 1921.

30 The undersigned, Christoffer Hannevig, hereby resigns as a director of The Pusey & Jones Company, such resignation to take effect when the same is presented at and accepted by the Board of Directors of such Corporation, at any meeting of such Board. (Sgd.) Christoffer Hannevig. Witness: Chas. Kimmich.

New York, March 17, 1921.

The undersigned, Lester Ussing, hereby resigns the office of a Director of The Pusey & Jones Company, such resignation to take effect when the same is presented at and accepted by the Board of Directors of such Corporation at any meeting of such Board. (Sgd.) Lester Ussing. Witness: William Tusel.

New York, March 17, 1921.

The undersigned, Charles Kimmich, hereby resigns the office of a Director of The Pusey & Jones Company, such resignation to take effect when the same is presented at and accepted by the Board of Directors of such Corporation at any meeting of such Board. (Sgd.) Chas. Kimmich. Witness: Clarence C. Fowler.

NOTE.—There was also annexed to these Minutes copy of Memorandum or plan of action, referred to as agreement of March 18, 1921, annexed to bill of complaint as Exhibit "F," and, therefore, not reprinted here. (See Record, page 65.)

131 A special meeting of the Board of Directors of the Pusey & Jones Company was held on the 25th day of March, 1921, at the office of Henry A. Wise, 15 William Street, New York City, at 11 o'clock A. M. Present: Henry A. Wise, Hartwell Cabell, Laurence Leonard, being the majority of the then members of the Board.

On motion, duly seconded and carried, Mr. Henry A. Wise was made Chairman of the meeting in the absence of the Vice President, Mr. William G. Coxe.

On motion, duly seconded, the resignation of Charles Kimmich, as Director (presented to the last meeting), was accepted.

George Weems Williams was nominated as Director, in place of Charles Kimmich, resigned.

The Secretary informed the meeting that Mr. Williams was the owner and holder of three shares of stock of the Pusey & Jones Company, therefore qualified to serve as a Director.

There being no other nominations, Mr. George Weems Williams, on motion, was unanimously elected as Director of the Pusey & Jones Company.

On motion, duly seconded, it was

Resolved, that the Executive Committee, provided for by Section IX of the By-Laws of the Company, be re-constituted and consist of three members.

The following members of the Board were nominated and elected as members of the Executive Committee: Henry A. Wise, Hartwell

Cabell, George Weems Williams.

132 On motion, duly seconded, Henry A. Wise was elected Chairman of the Committee.

On the above motions and elections, Laurence Leonard did not vote.

On motion, duly seconded (Laurence Leonard not voting), it was

Resolved that the Executive Committee be authorized to employ Robert H. Montgomery for the purpose of auditing the accounts between the Company and the United States Shipping Board Emergency Fleet Corporation; the compensation of the accountant to be settled by the Executive Committee.

On motion, duly seconded (Laurence Leonard not voting), it was resolved that Chester N. Farr, Jr., be continued as Secretary and General Counsel of the Company, on the terms now existing.

On motion, duly seconded (Laurence Leonard not voting), it was

Resolved, that the election of Charles Kimmich as Managing Director by resolution of February 5, 1919, be and the same is hereby rescinded.

On motion, duly seconded (Laurence Leonard not voting), it was Resolved, that action on the salary of the Treasurer be postponed until the next meeting.

On motion the meeting adjourned, to meet at the call of the Chairman of the Executive Committee.

(Here follows check, marked pages 133 and 134.)

ENTERED

CERTIFIED CORRECT

APPROVED



Check Referred to in Paragraph "Second" of Stipulation.

THE BALTIMORE DRY DOCKS & SHIP BUILDING CO.

No. _____

BALTIMORE FEB. 11, 1920.

PAY TO THE ORDER OF THE PUSEY AND JONES COMPANY

\$750,000.00

VOUCHER No. _____

H. C. Green

PRESIDENT

NATIONAL CITY BANK OF NEW YORK
NEW YORK, N. Y.

VICE PRES. & GEN. MGR.

TREASURER

George Allison

THIS CHECK IS VOID IF DETACHED

THIS VOUCHER CHECK IS
A PAYMENT IN FULL OF THE WITHIN
ACCOUNT AND IT IS AGREED THAT
THE PAYEE'S ENDORSEMENT HEREON
SHALL CONSTITUTE AN ACKNOWLEDG-
MENT OF SUCH PAYMENT.

RECEIVED
HARVEY NATIONAL BANK
PUSEY AND JONES COMPANY
President

PAY TO THE ORDER OF
EMPIRE TRUST CO. OF N. Y.
HANNEVIG AND COMPANY
FEB 11 1920



PAY TO THE ORDER OF
HARVEY NATIONAL BANK
EMPIRE TRUST CO.
NEW YORK, N. Y.
RECEIVED PAYMENT
FEB 11 1920
NEW YORK, N. Y.

~~STAMP~~ THE BALTIMORE DRY DOCKS & SHIP BUILDING CO.

VOUCHER NO.

BALTIMORE, MD.

DATE Feb'y 11

19120

AMOUNT \$750,000.00

DISTRIBUTION

OR DISCOUNT

First payment under contract dated February 11, 1920, between the Baltimore Dry Docks & Shipbuilding Co. and The Pusey and Jones Co.

135 **DOCKET ENTRIES IN SUIT OF BALTIMORE DRY
DOCKS & SHIPBUILDING COMPANY AGAINST
THE PUSEY AND JONES COMPANY.**

In the District Court of the United States for the District of
Delaware, September Term, 1920.

No. 6.

BALTIMORE DRY DOCKS & SHIPBUILDING COMPANY, a Corporation
Formed under the Laws of the State of Maryland and a Resident
and Citizen of That State, Plaintiff,

v.

THE PUSEY AND JONES COMPANY, a Corporation Formed under the
Laws of the State of Delaware and a Resident and Citizen of That
State, Defendant.

- Sept. 9, 1920. Praecipe filed; same day summons issued, return-
able second Tuesday in September, 1920.
- " 14, " Defendant appears by Robert Penington and
George N. Davis, Esqrs., its attorneys; same day
praecipe filed.
- " " " Summons with acceptance of service endorsed
thereon, filed.
- Oct. 8, 1920. Stipulation filed; same day order that form of action
be amended by changing same to action of
136 "Covenant," &c.; same day said order filed.
- Oct. 9, 1920. Declaration filed; and rule pleas on or before 1st
Monday in December next. (Exit rule.)
- Dec. 13, 1920. Defendant's pleas filed; and rule replication on or
before 23d inst. (Exit rule.)
- " 22, " Plaintiff's replications and issues, filed.
- Mar. 15, 1921. Stipulation waiving jury trial, filed.
- " 22, " Trial before the Court without a jury; same day the
Court made a general finding of fact in favor of
the plaintiff and assessed its damages at the sum
of eight hundred thousand one hundred twenty-
five dollars (\$800,125) besides costs. Judgment
accordingly.

And now, to wit, this twenty-second day of March,
A. D. 1921, it is considered and adjudged by the
Court, now here that the said plaintiff, Baltimore
Dry Docks & Ship Building Company do have
and recover from the said defendant, The Pusey
and Jones Company, the sum of eight hundred
thousand one hundred twenty-five dollars (\$800,-
125), and its costs in and about this suit ex-
pended, and have execution therefor.
Attest: (Sgd.) Wm. G. Mahaffy, Clerk.

Apr. 1, 1921. Costs taxed at the sum of forty-eight dollars and twenty cents (\$48.20), and taxed bill filed.

137

June 13, 1921. Petition of Willard Saulsbury and Charles B. Evans, receivers of The Pusey and Jones Company, filed; same day motion of petitioners for rule to show cause on plaintiff, filed; same day order that rule to show cause issue, returnable June Term, A. D. 1921; same day said order filed.

" " " Rule to show cause issued.

" 14, " Rule to show cause with acceptance of service by attorney for plaintiff endorsed thereon filed.

" " " Order extending time for plaintiff to file return to rule to show cause until June 27, 1921.

" 27, " Answer of plaintiff to petition of receivers, filed.

Aug. 1, 1921. Order that affidavits on behalf of receivers be filed on or before September 13, 1921, and on behalf of plaintiff on or before October 13, 1921.

ANSWER OF DEFENDANT.

[Filed June 18, 1921.]

Now comes the respondent, The Pusey & Jones Company, and for its answer herein

1. Denies that it has any knowledge sufficient to form a belief as to whether or not this complainant is a subject of the King of Norway or a subject of the Kingdom of Norway, or where his residence is.

2. This respondent, The Pusey & Jones Company, is a corporation organized and existing under the laws of the State of
138 Delaware, formed by the consolidation or merger of prior corporations known as The Pusey & Jones Company, Pennsylvania Shipbuilding Company and New Jersey Shipbuilding Company, in said agreement of December 27, 1917, and recorded as alleged in the bill of complaint:

3. This respondent denies that its principal office or place of business is or has been in the City of Wilmington, Delaware, but admits that it has an office and place of business there.

4. Respondent alleges that its principal place of business is in the City, County and State of New York.

5. Respondent admits that The Pusey & Jones Company, the New Jersey Shipbuilding Company and the Pennsylvania Shipbuilding Company, prior to January 24, 1918, had been engaged in building ships for various private persons at their plants at Wilmington, Delaware, and Gloucester, New Jersey; that prior to that time the United States Government had taken over the interests of the customers of said corporations in said shipbuilding contracts and required the completion of the ships for the United States Shipping

Board Emergency Fleet Corporation, and the building of such ships was conducted by said respondent from and after its organization.

6. This respondent admits that it has been and is the owner of great tracts of land with plants thereon erected and the fixtures, tools and machinery belonging thereto, one situated at Wilmington, Delaware, and the other at Gloucester, New Jersey.

7. This respondent admits that its authorized capital stock is \$20,000,000, divided into 100,000 shares of preferred stock of the par value of \$100 each, and 100,000 shares of common stock of the par value of \$100 each, but that the total capital stock issued and outstanding consists of 3,868 shares of common stock and 47,637 shares of preferred stock, which constitute the entire issued and outstanding stock of said corporation.

8. This respondent further alleges that 18 shares of the common stock of this corporation were held as qualifying shares of the several directors other than Christoffer Hannevig, that all the rest of the stock, both common and preferred, was held and owned and stands in either the name of Christoffer Hannevig or Ralph J. M. Bullowa, who was counsel to said Christoffer Hannevig, or in the name of Christoffer Hannevig, Inc., a corporation organized under the laws of New York entirely owned by said Christoffer Hannevig; that such stock was so held on the first of January, 1920, and has been ever since so held save and except only that said Christoffer Hannevig, from time to time pledged various amounts of the stock so held by him as collateral security for indebtedness of his own or obligations he personally had assumed.

9. This respondent denies that complainant is or ever has been a stockholder of respondent corporation.

10. This respondent admits that some time during the year 1918 it issued and delivered certificate Nos. A-4, A-10 and A-18, representing in the aggregate 7200 shares of its preferred capital stock as follows:

Certificate A-4 for 5000 shares to Christoffer Hannevig, Inc.

Certificate A-10 for 2000 shares to Christoffer Hannevig, Inc.

Certificate A-18 for 200 shares to Christoffer Hannevig.

11. This respondent denies that said certificates were ever transferred or assigned to the complainant, denies the same ever became his property and denies that he is the holder or owner of said shares of stock.

12. This respondent denies that the complainant is a creditor of this respondent in the sum of \$650,000 with interest thereon, or in any sum or amount whatsoever.

13. This respondent admits that in the year 1917 nine notes were signed by this respondent to the order of Christoffer Hannevig, Inc., or Christoffer Hannevig, dated at the dates mentioned and payable at the times mentioned in paragraph 7 of the bill of complaint.

14. This respondent denies that the complainant is the owner of said notes or any thereof, and denies that there is any sum due upon said notes from the respondent whatsoever.

15. This respondent admits that the complainant, being in possession of said nine notes, presented same on or about June 6, 1921, at the banking house of the Delaware Trust Company, Wilmington,

Delaware, and made demand for the payment of the said notes which was refused, and that he made demand for the payment of the said notes at the office of the respondent in Wilmington, Delaware, which was refused.

16. This respondent denies that it is insolvent or in any way unable to pay its obligations as they fall due in the due course of business or in the sense of not having assets enough to meet its liabilities and leave a surplus.

17. This respondent alleges that it has cash in the bank in the sum of \$200,000 and immediately convertible assets for an
141 additional equal amount of \$200,000 in the form of promissory notes and bills receivable from responsible parties maturing shortly.

18. This respondent further admits and alleges that on March 22, 1921, the judgment was recovered by the Baltimore Dry Docks & Shipbuilding Company against this respondent in the sum of \$800,125, besides costs of suit, no part of which judgment has been paid and same now remains open and unsatisfied of record in the District Court of the United States for the District of Delaware, but that by agreement entered into on the eighteenth day of March, 1921, when that cause was about to come to trial, said Baltimore Dry Dock & Shipbuilding Company agreed that it would not issue any execution on that judgment for a period of six months from the date of entry thereof, that such agreement is in force and was made for the very purpose of enabling this respondent to realize on its claims against the United States Shipping Board Emergency Fleet Corporation, which all parties were satisfied would produce funds far in excess of claims against this respondent and enable it to meet the claim of said Baltimore Dry Docks & Shipbuilding Company in full, as well as any other obligations, leaving it a large surplus of several million dollars.

19. This respondent is engaged in negotiations with the United States Shipping Board Emergency Fleet Corporation about the settlement of said claims which are pending in the United States Court of Claims, and pending the adjustment of its claims against the Shipping Board all proceedings by the said Shipping Board to foreclose the \$5,000,000 mortgage mentioned in the bill of complaint have
142 been stayed by writ of mandamus issued by the Supreme Court for the District of Columbia, and all proceedings to foreclose that mortgage are now stayed pending the determination of the complainant's complaint against said Shipping Board.

20. The respondent alleges on information and belief that there is due this respondent from the United States Shipping Board Emergency Fleet Corporation over and above all claims of the United States Shipping Board Emergency Fleet Corporation including the said mortgage for \$5,000,000, more than \$7,000,000 net. No interest and no principal is due upon the said mortgage which is involved in the said proceedings in the Court of Claims and in the said negotiations for settlement.

21. This respondent admits that there is pending against it a mechanic's lien brought against it by George F. Pawling & Co., in

which the plaintiff seeks the recovery of between \$40,000 and \$41,000. Said claim is honestly disputed and is in litigation and plaintiff has taken no steps to bring same on for trial. This respondent maintains that there is nothing whatever due from it to George F. Pawling & Co.

22. This respondent denies that there are any other suits brought against it, and this respondent denies that piecemeal sales are being threatened or made under either the judgment, the mortgage or the suits aforesaid.

23. This respondent alleges that all sums advanced to it by the United States Shipping Board Emergency Fleet Corporation mentioned in the complaint herein as a liability of this respondent to the Shipping Board are more than offset by the claims of this respondent against the United States Shipping Board as aforesaid; that this respondent is entitled to recover a sum in excess of \$7,000,000 from the United States Shipping Board

Emergency Fleet Corporation. The United States Shipping Board Emergency Fleet Corporation has never refused and does not now refuse to recognize the valid indebtedness due the respondent from it but disputes the amount thereof; that the said United States Shipping Board Emergency Fleet Corporation admits an indebtedness above the said \$5,000,000 mortgage to this respondent of over \$2,100,000, but seeks to offset against said sum a personal claim of the United States Shipping Board Emergency Fleet Corporation against said Christoffer Hannevig.

24. This respondent denies that Exhibit "E" is a memorandum of the United States Shipping Board Emergency Fleet Corporation, and says it is simply a memorandum written by two men in its employ who were largely unfamiliar with the facts, and such report was never adopted by said United States Shipping Board Emergency Fleet Corporation.

25. This respondent admits the execution of an agreement of which Exhibit "F" of the bill of complaint is substantially a copy, but refers to the original agreement for the exact language thereof.

26. This respondent denies each and all allegations contained in paragraphs of the bill numbered 14, save and except as follows: This respondent alleges that on February 11, 1920, it entered into an agreement with the Baltimore Dry Docks & Shipbuilding Company bearing date of the day of the sale to it of the Gloucester plants which consisted of two-thirds of its entire plant to the Baltimore Dry Docks & Shipbuilding Company for the sum of \$1,200,000, a copy of which contract is annexed to the bill of complaint, marked "Exhibit G." This respondent for greater security prays reference to the original agreement when produced. That said Baltimore Dry Docks & Shipbuilding Company made a preliminary payment to this respondent on account of said purchase price, of \$750,000, and said Christoffer Hannevig then and there delivered to the said Baltimore Dry Docks & Shipbuilding Company as collateral security for the repayment of said \$750,000, in case the contract was not carried through, 20,000 shares of the preferred capital stock of this company, and 3,850 shares of its

common stock, all of which were the property of said Christoffer Hannevig. The check for the said sum of \$750,000 was given by said Baltimore Dry Docks & Shipbuilding Company to this respondent and was delivered to said Christoffer Hannevig as president of this respondent. Said check was by him, as such president, deposited with said Hannevig & Company, and the deposit of said check for \$750,000 for this respondent, with said Hannevig & Company and to its credit with them was ratified and approved by the unanimous vote of the board of directors at a regular meeting thereof; and such resolution and ratification and such deposit had the direct approval of the holders of more than 99½ per cent of the stock of this respondent corporation. That thereafter, for various reasons, the said agreement for the sale of the Gloucester plant was not carried out largely on account of the rulings of the United States Shipping Board; and the said sum of \$750,000 was required to be returned to the Baltimore Dry Docks & Shipbuilding Company.

27. This respondent admits that said Christoffer Hannevig subsequently converted the said sum of \$750,000 to his own
145 use, and alleges that he was indebted to this respondent from and after the first of March, 1920, in the sum of \$750,000.

28. This respondent further alleges that at the time of the conversion of said \$750,000 by said Hannevig to his own use, the said Hannevig held each and all of the said nine promissory notes signed by this company, mentioned and described in the bill of complaint, and that same were then each and all overdue; and the said claim of this respondent for \$750,000 against said Christoffer Hannevig was a complete offset and counterclaim against said nine notes and each and every part thereof.

29. This respondent further alleges that so far as the Baltimore Dry Docks & Shipbuilding Company was concerned the said payment of \$750,000 by check to the order of this company was a complete payment to this company, and under its said contract with the said Baltimore Dry Docks & Shipbuilding Company, this respondent was obligated on September 9, 1920, to pay said sum to the said Baltimore Dry Docks & Shipbuilding Company, which thereupon instituted suit in this court against this respondent to recover said amount.

30. This respondent had no valid defense on the merits to the said action, and when the same had been peremptorily set down for trial on the 22d of March, 1921, this respondent, after careful consultation with its counsel, found itself confronted with the situation that judgment would be recovered against it on said obligation. That the persons chiefly interested in its stock and as its creditors held a conference and entered into an agreement of which a copy is annexed to the bill of complaint as Exhibit F thereof, but for greater security this respondent prays to refer to the original instrument for the exact language thereof.

146 31. This respondent further alleges that the said Christoffer Hannevig received said \$750,000 to the credit of this respondent on the eleventh day of February, 1920, and that he con-

verted the same to his own use prior to his delivery of any of the said notes to the complainant.

32. This respondent further alleges that the said nine notes were not any of them sold or transferred by said Christoffer Hannevig to the complainant, nor were any of the said certificates of stock, Numbers A1, A10 and A18, but each and all of said nine notes and the said three certificates of stock were on or after February 13, 1920, and after said Hannevig had so received and converted the said \$750,000 so belonging to this respondent, pledged by the said Christoffer Hannevig with the said complainant as collateral security for various claims of various persons represented by said complainant against the said Christoffer Hannevig personally, and not against this respondent.

33. This respondent expressly denies that the said check for \$750,000 was not paid to this respondent, and alleges that it was received by this respondent and by it turned over to said Christoffer Hannevig for deposit to its credit.

34. This respondent further says that the said agreement, Exhibit F of the bill of complaint, was devised and intended to serve the interests of this company to the utmost and secured for it a respite for six months from the entry of judgment being such agreement that no execution should issue for six months, being in effect an extension of the time for payment; and such extension was granted for the express purpose of enabling this respondent to adjust its matters with the United States Shipping Board Emergency Fleet Corporation.

147 35. This respondent denies that any wrong was perpetrated upon it by the said agreement.

36. This respondent denies that the complainant is or ever has been a creditor of this respondent or a holder of any of its stock, and asserts that it is entitled to a trial by jury in an action at law under and by virtue of the Constitution of the United States on the question whether the complainant is a creditor of this respondent and that this proceeding may not be maintained in equity in the courts of the United States depriving this respondent of its constitutional rights.

37. This respondent further alleges that the delivery of said certificates of stock and of the nine promissory notes mentioned in the bill of complaint by said Christoffer Hannevig to the complainant took place in the City of New York on or after February 13, 1920.

38. This respondent further alleges on information and belief that eight of the nine notes, aggregating \$350,000, which run to Christoffer Hannevig, Inc., were really notes held and made to it as the representative of said Christoffer Hannevig and taken by said Christoffer Hannevig, Inc., for said Christoffer Hannevig, and after execution thereof and prior to the 17th of September, 1917, the same were delivered by said Christoffer Hannevig, Inc., to said Christoffer Hannevig and were held by him individually continuously from 1917 until he delivered the same to the complainant in February, 1920, and that he was the real owner of the said notes.

39. This respondent expressly alleges that the complainant is not and never has been a holder of any of the said notes for value before maturity, or in the regular course of business, and denies that the complainant has or ever has had any of the rights as possessor of the said notes of a holder thereof acquiring the same in good faith for value before maturity, and alleges that the respondent took the same from said Christoffer Hannevig, subject to all defenses that this respondent had to the said notes in the hands of said Christoffer Hannevig, and subject to all counterclaims which this respondent had against the said Christoffer Hannevig at the time of the pledge of said notes by said Christoffer Hannevig to the complainant.

40. This respondent further denies that any waste is being made of its assets or that any waste thereof is threatened or that any occasion exists for the appointment of a receiver, and alleges that its assets are being conserved with the utmost care under the immediate supervision of a board of directors which includes the United States receiver in bankruptcy of Christoffer Hannevig and of Christoffer Hannevig, Inc., a representative of the United States Shipping Board and a representative of the insurance department of the States of New York and Pennsylvania, and further alleges that its business and affairs are today being conducted at a profit and no occasion exists for the appointment of a receiver and that no honest interests of the defendant corporation, its creditors or stockholders would be subserved by the appointment of receivers.

41. And the respondent denies that this court has any jurisdiction to entertain a proceeding of this character which is neither at law nor in equity.

12. This respondent denies that any emergency or any conditions making necessary the appointment of receiver here exists.
 119 It denies that it is insolvent in any sense and denies that the complainant is either a creditor or a stockholder of the respondent.

Wherefore, this respondent prays that the bill of complaint be dismissed and that the ex parte order herein appointing a receiver be vacated and that this respondent be hence dismissed with its costs. (Sgd.) Robert Penington, George N. Davis, Solicitors for Respondent. Wilmington, Delaware.

DISTRICT OF DELAWARE,

County of New Castle, ss.:

Personally appeared before me, Samuel H. Baynard, Jr., a notary public for the State of Delaware, Clarence B. Lynch, who being by me duly qualified according to law, did depose and say that he is the assistant treasurer of The Pusey and Jones Company, the defendant in the above entitled cause, and as such is duly authorized to file the foregoing answer on behalf of the defendant; and further says that the averments contained in the foregoing answer are true and correct to the best of the deponent's knowledge, information and belief. (Sgd.) Clarence B. Lynch.

Subscribed and sworn to before me this eighteenth day of June, A. D. 1921. [Seal.] (Sgd.) Samuel H. Baynard, Jr., Notary Public.

150 **AFFIDAVIT OF CHARLES STEWART LEE.**

[Filed June 18, 1921.]

And now, to wit, this seventeenth day of June, A. D. 1921, personally appeared before the subscriber a notary public for the State of Delaware, Charles Stewart Lee, known to me personally to be such, who having first been duly sworn according to law, deposes and says:

First. That he has been in the employ of The Pusey and Jones Company, of Wilmington, Delaware, since 1908 with the exception of a period of a few months. That during that time he has filled various positions with the company, for the past two years, having been in direct charge of the sales of the company. The company at this moment has active inquiries for greater volume of business than it has had since September, 1920, it has during the period of world-wide depression, which has existed in the manufacturing world during the past six months, been able to secure in competition contracts for its product in a sufficient volume to operate the plant at more than 70 per cent. of its capacity. There are now under negotiations, with possibilities of closing immediately, contracts for upwards of five hundred thousand dollars (\$500,000) with a further opportunity of securing business of more than a million dollars additional within the next ninety days. The jobbing and repair department of the company's business is in prosperous shape and is earning on an average of better than seven thousand dollars (\$7,000) per month, net profits.

Second. It is common knowledge that the paper industry during the past two years has been more prosperous than for a generation, and this prosperity has been and will continue to be reflected in the Company's affairs.

Third. From the intimate knowledge which I have of the business of the company from all of its angles, most particularly that of distribution of its products, a continuation of the receivership will make it practically impossible to close contracts which are pending, the proportion of which may be closed within two weeks amounting to two hundred and fifty thousand dollars (\$250,000). (Sgd.) Charles Stewart Lee.

Sworn to and subscribed before me the day and year first above written. [Seal.] (Sgd.) Samuel H. Baynard, Jr., Notary Public.

AFFIDAVIT OF ROBERT PENINGTON.

[Filed June 18, 1921.]

And now, to wit, this eighteenth day of June, A. D. 1921, personally appeared before me Robert Penington, who being by me

duly sworn according to law, did depose and say that he has been a member of the bar of this court for upwards of twenty years; that he has been counsel for The Pusey and Jones Company since the early part of 1917; that he was of counsel of record in the suit at law brought in this court by the Baltimore Dry Docks and Shipbuilding Company against the said The Pusey and Jones Company; that in this case he was associated with George N. Davis, Esq., a member of the bar of this court, and Chester N. Farr, Esq., a member of the bar in the District Court of the United States for the Eastern District of Pennsylvania; that after giving consideration to all possible defenses to the suit, it was decided to retain William A. Glasgow, Jr., Esq., of Philadelphia, as associate counsel, and several conferences were had with Mr. Glasgow, at which were present individuals connected with The Pusey and Jones Company familiar with the facts, and the records of the company were also examined. As a result of said conferences, and the examination of the records of the company, the conclusion was reached that no testimony to support a valid defense to said suit could be obtained, and that we were forced into the position of depending upon the possibility of taking advantage of some failure of proof on the part of the plaintiff, which might arise during the course of the trial, and for this purpose William A. Glasgow, Jr., Esq., came to Wilmington, was present at the trial, and cross-examined the witnesses produced by the plaintiff. As a result of said trial, judgment was given in favor of the plaintiff. Deponent denies that said judgment was illegally and unlawfully suffered to be entered in said action, and that there was collusion between the parties concerning the entry of said judgment, but affirmatively states that every effort was made to discover a possible defense to said action, and that the suggested defense set forth in Paragraph 14 of the bill of complaint, filed by the said Hans Karluf Hanssen, was considered by counsel among other defenses, and was rejected by counsel, because, in the opinion of counsel, there was no substantial evidence in support of said defense. (Sgd.) Robert Penington.

Sworn to and subscribed before me the day and year first above written. [Seal.] (Sgd.) Samuel H. Baynard, Jr., Notary Public.

153

AFFIDAVIT OF GEORGE N. DAVIS.

[Filed June 18, 1921.]

And now, to wit, this sixteenth day of June, A. D. 1921, personally appeared before me George N. Davis, who being by me duly sworn according to law, did depose and say that he has been a member of the bar of this court for upwards of seventeen years; that he has been associated with counsel for The Pusey and Jones Company since the summer of 1919; that he was of counsel of record in the suit at law brought in this court by the Baltimore Dry Docks and Shipbuilding Company against the said The Pusey and Jones Company; that in this case, he was associated with Robert Penington, Esq., a member of the bar of this court, and Chester N. Farr,

Esq., a member of the bar in the District Court of the United States for the Eastern District of Pennsylvania; that after giving consideration to all possible defenses to the suit, it was decided to retain William A. Glasgow, Jr., Esq., of Philadelphia, as associate counsel, and several conferences were had with Mr. Glasgow, at which were present individuals connected with The Pusey and Jones Company familiar with the facts, and the records of the company were also examined. As a result of said conferences, and the examination of the records of the company, the conclusion was reached that no testimony to support a valid defense to said suit could be obtained, and that we were forced into the position of depending upon the possibility of taking advantage of some failure of proof on the part of the plaintiff, which might arise during the course of the trial, and for this purpose William A. Glasgow, Jr., Esq., came to Wilmington, was present at the trial, and cross-examined the witnesses produced by the plaintiff. As a result of said trial, judgment was given
154 in favor of the plaintiff. Deponent denies that said judgment was illegally and unlawfully suffered to be entered in said action, and that there was collusion between the parties concerning the entry of said judgment, but affirmatively states that every effort was made to discover a possible defense in said action, and that the suggested defense set forth in paragraph 14 of the bill of complaint, filed by the said Hans Karluf Hanssen was considered by counsel among other defenses, and was rejected by counsel, because, in the opinion of counsel, there was no substantial evidence in support of said defense. (Sgd.) George N. Davis.

Sworn to and subscribed before me the day and year first above written. [Seal.] (Sgd.) Samuel H. Baynard, Jr., Notary Public.

AFFIDAVIT OF CHARLES KIMMICH.

[Filed June 18, 1921.]

Charles Kimmich, being duly sworn, deposes and says:

1. I was managing director of The Pusey and Jones Company prior to the appointment of receivers of Christoffer Hannevig, which occurred in February, 1921. I had occupied that position and was connected with The Pusey and Jones Company for about a year and a half.

2. I am familiar with the claims of The Pusey and Jones Company against the United States Shipping Board. These claims are the result of the following situation: The Pusey and Jones Company had forty-five ships under construction on August 3, 1917,
155 the date the Government requisitioned all ships in process of construction. The Pusey and Jones Company was ordered to complete these vessels for the United States Shipping Board Emergency Fleet Corporation. This work was done. The services rendered by The Pusey and Jones Company spread over a period of approximately three years. The total tonnage delivered to the Government was approximately 260,000 tons and a considerably amount

of work was done upon 60,000 additional tons of shipping, but these ships were never completed on account of cancellation orders.

3. A fair value of the services rendered in commercial transactions would make the amount due The Pusey and Jones Company somewhere between \$12,000,000 and \$15,000,000.

4. The Government was obliged under the law to pay just compensation for the services rendered, which just compensation The Pusey and Jones Company can prove to be approximately \$14,000,000.

5. No part of this money has been paid by the Government to The Pusey and Jones Company, directly or indirectly.

6. There can be little question about the right of The Pusey and Jones Company to recover this money from the Shipping Board. Under date May 14, 1918, an agreement was entered into by and between The Pusey and Jones Company and the Shipping Board, a copy of which is hereto annexed. By the terms of this agreement The Pusey and Jones Company gave a mortgage to the Shipping Board of approximately \$5,000,000. And in and by the said agreement the payment of the mortgage was provided for in this way: The \$5,000,000, it was agreed, should be paid out of the just compensation above referred to. In my opinion, The Pusey and Jones Company is entitled to recover from the Shipping Board, over and above the \$5,000,000 above referred to, at least \$9,000,000.

7. No settlement was ever made by the Shipping Board except that the Shipping Board make an award of approximately \$7,000,000 in liquidation of the claim of \$14,000,000. This was not accepted by The Pusey and Jones Company for the reason, among others, that the Shipping Board first sought to deduct about \$3,500,000 which it claimed was owing to it by Christoffer Hannevig individually. The Shipping Board took the position that Christoffer Hannevig and The Pusey and Jones Company were one and the same thing.

8. Because of the failure to get a prompt settlement from the Shipping Board, three different legal proceedings were taken. First, a suit in equity brought in the Supreme Court of the District of Columbia, known as No. 38163. Then a mandamus proceeding and afterwards proceedings in the Court of Claims.

9. The equity suit was brought for an injunction to re-train the Shipping Board from fore-closing its mortgage above referred to of \$5,000,000 pending the trial of the issues before the Court of Claims. That injunction was granted and is now in full force and effect. It is a matter of court record in the Supreme Court of the District of Columbia, and deponent begs to refer to the records in the Supreme Court of the District of Columbia in the said equity suit with the same force and effect as if the said record were hereto annexed and made a part hereof. The matter was presented on behalf of The

157 Pusey and Jones Company by Hon. Charles E. Hughes, the present Secretary of State of the United States, and by Frederic D. McKinney, Esq., of the Washington, D. C., bar.

10. The mandamus proceeding was brought for the purpose of compelling the Emergency Fleet Corporation to immediately apply

5 per cent of the award made to The Pusey and Jones Company towards the satisfaction of the bond and mortgage. This suit has been pending for approximately five months and a favorable decision hereon will satisfy the entire mortgage of The Pusey and Jones Company and free its plants from all encumbrances. That proceeding is before Mr. Justice Siddons in the Supreme Court of the District of Columbia. It is now pending undetermined. No decision has yet been rendered. The matter was presented on behalf of The Pusey and Jones Company by Hon. Charles E. Hughes, the present Secretary of State of the United States, and by Frederic D. McKinney, Esq., of the Washington, D. C., bar.

11. The third legal proceeding is the proceeding in the Court of Claims. This proceeding was brought by the same firms of attorneys who handled the two preceding litigations. Deponent begs to refer to the record in the said proceedings with the same force and effect as if the said record were hereto annexed. The proceeding in the Court of Claims is to recover \$14,000,000 as above set forth.

12. If the Supreme Court of the District of Columbia or the Court of Claims should hold that the Shipping Board has no right to deduct from the award of about \$7,000,000 the \$3,500,000 which the Shipping Board claims is owing to it by Christoffer Hannevig individually, then the amount of surplus cash for free use is more than sufficient to pay any alleged claims of the plaintiff in this suit and all claims of the Baltimore Dry Docks and Shipbuilding Company, if any, and all current obligations of every nature, kind and description and still leave The Pusey and Jones Company with both plants free and clear.

13. As an officer of The Pusey and Jones Company, immediately following the receivership of Christoffer Hannevig and his companies in New York, I consistently opposed the appointment of receivers for The Pusey and Jones Company. Knowing the nature of the business as I do, I felt that a receivership would be a very unfortunate thing for the company, because it would interfere seriously with its getting new contracts for paper-making machinery and in a general way weaken the morale of its position before the Government in vigorously prosecuting its claims and demanding its full rights under the law. This position I still hold and I am firmly of the opinion that a receivership will operate very disastrously towards the successful operation of the plants. (Sgd.) Charles Kimmich.

Sworn to before me this 16th day of June, 1921. (Sgd.) Jos. K. Guerin, Commissioner of Deeds, City of New York.

NOTE.—There was annexed to original of the foregoing affidavit as an exhibit copy of bill of complaint and exhibits in cause No. 38,163 in the Supreme Court of the District of Columbia, in the case of The Pusey and Jones Company, plaintiff, v. United States Shipping Board Emergency Fleet Corporation, defendant. Same exhibit is attached to and printed as an exhibit to affidavit of Frederic D. McKinney, and not reprinted here. (See Record, p. 167.)

159 **AFFIDAVIT OF CHESTER N. FARR, Jr.**

[Filed June 18, 1921.]

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Chester N. Farr, Jr., being duly sworn according to law, deposes and says that he is the secretary of The Pusey and Jones Company, and that the minutes of The Pusey and Jones Company show the following entries:

At a special meeting of the Board of Directors of The Pusey and Jones Company, held on the sixteenth day of February, 1920, according to notice duly given, the following resolution was passed:

"Resolved: That the Agreement between this Company and the Baltimore Dry Docks & Shipbuilding Company, dated February 11, 1920, and the execution of the same by the President be, and the same hereby are ratified, confirmed and approved; and be it.

Further Resolved: That the proper officers of this Company be, and they hereby are authorized and directed to execute, acknowledge and deliver the said Agreement on behalf of this Company and to do any and all acts and to make, execute and deliver any and all instruments in writing necessary, proper, or expedient to carry into effect the said Agreement."

That the agreement between the Baltimore Dry Docks and Shipbuilding Company and The Pusey and Jones Company referred to in the above resolution, is the same agreement as that set forth in Exhibit G of the bill filed by the complainant herein.

Your deponent further avers that at a special meeting of the Board of Directors of The Pusey and Jones Company, held on the
160 fifteenth day of March, 1920, in accordance with notice duly given under the provisions of the by-laws, the following preamble and resolution was unanimously adopted:

"Whereas the President of this Company has deposited with the Baltimore Dry Docks & Shipbuilding Company 3,850 shares of common stock and 20,000 shares of preferred stock of this company, belonging to him personally as security for the \$750,000 deposited by the Baltimore Dry Docks & Shipbuilding Company on the proposed sale of the plant of this Company at Gloucester City, New Jersey,

"Resolved, that subject to the approval of Counsel, the President of this company be and hereby is authorized and designated as the officer of this Company to hold the said sum of \$750,000."

And your deponent avers that he is informed and believes that the said sum of \$750,000 referred to in the above resolution is the same sum of \$750,000 referred to in paragraph 14, et sequitur, in plaintiff's bill.

Your deponent is informed that counsel, whose approval was taken upon the above resolution, was Ralph James M. Bullowa, Esq., of the New York bar and of the board of directors.

Your deponent further avers that he is the general counsel of The Pusey and Jones Company, and was the general counsel of The Pusey and Jones Company during the period of the litigation instituted against The Pusey and Jones Company by the Baltimore Dry Docks and Shipbuilding Company, No. 6 of September Term, 1920, of this court.

Your deponent denies that the judgment entered in said action of covenant, brought by the Baltimore Dry Docks and Shipbuilding Company against the Pusey and Jones Company was illegally and unlawfully suffered to be entered by the defendant herein.

161 but your deponent avers that he, on behalf of The Pusey and Jones Company in said litigation, associated with himself in the District of Delaware, Robert Penington, Esq., and George N. Davis, Esq., and further engaged William A. Glasgow, Jr., Esq., of the Philadelphia bar, to assist in the preparation and presentation of whatever defense the defendant herein might have to said action of covenant.

That your deponent avers that a careful, painstaking and exhaustive examination was made of every possible defense, and the facts upon which such a defense might be based by all of the counsel in the case at frequent conferences, and that all possible defenses were considered and discussed. After such consideration, and a final analysis of the evidence which had been investigated, all counsel agreed that no testimony could be presented by which any effective defense could be maintained.

That the case was duly called for trial. William A. Glasgow, Jr., Esq., Robert Penington, Esq., and George N. Davis, Esq., conducted the said trial. The Baltimore Dry Docks and Shipbuilding Company, plaintiff in the said suit, was put to full proof of its claim, its witnesses duly cross-examined and after consideration of the matter, judgment was entered by this court in favor of the plaintiff.

Your deponent avers that every step in the above case connected with the defense thereof was taken in good faith and with every endeavor to present as full a defense as possible on behalf of The Pusey and Jones Company to the claim made by the Baltimore Dry Docks and Shipbuilding Company.

The suggested defense set forth in paragraph 14 of the plaintiff's bill was considered by counsel, but no evidence was found to support it.

162 In answer to that portion of paragraph 11, page 10 of complainant's bill, your deponent avers that he is familiar with the litigation against The Pusey and Jones Company, in the State of New Jersey, and that only three claims are in litigation there, at the present time, including the claim of George F. Pawling & Company, referred to in this paragraph of complainant's bill; that the aggregate amount of the claims, outside of the claim of George F. Pawling & Company, does not exceed the sum of twelve thousand dollars (\$12,000); that The Pusey and Jones Company, as deponent is informed and believes, has a meritorious defense to all of said claims, including the claim of George F. Pawling & Company, and that such defense has been asserted by answers duly filed in court,

and that further, should a recovery be had against The Pusey and Jones Company in any of said suits, The Pusey and Jones Company has an action over for the recovery of the amounts which might be recovered against it, against the firm of Lewis & Roth, in the case of George F. Pawling & Company and against the United States Shipping Board Emergency Fleet Corporation, in the case of the other two claims.

No judgment has been entered on the claim of George F. Pawling & Company, as asserted in the affidavit filed by John J. Maten, on behalf of the plaintiff, nor is there any claim made by Lewis & Roth Corporation, all claims in connection with said corporation having been paid and satisfied.

Your deponent avers that he has examined the certificates of stock, copies of which are attached to the bill of complaint, and admits that they were submitted to him on the sixth day of June in a letter set forth in plaintiff's Exhibit B. Before he had an opportunity to investigate and reply to said letter, this bill of complaint was filed and the receivers were appointed.

Your deponent now avers that two of the stock certificates 163 show no title on their endorsement in the plaintiff either by endorsement in blank or otherwise. They show a transfer of the said stock to Christopher Hannevig. The third certificate is a certificate for 200 shares, and your deponent avers that The Pusey and Jones Company considers the complainant the pledgee of said stock and stands ready to make such proper notation on its stock records as are required by the laws of the State of Delaware to indicate this fact.

Your deponent further avers that the following is an extract from section 13 of the by-laws of The Pusey and Jones Company, headed "President's Duties":

"He may sign any notes, bills, drafts or checks, and shall sign and cause the seal of the Company to be affixed to any obligation, contract or agreement requiring the hand of the President and the seal of the Company; he may receive and give receipts for any moneys due and payable to the Company, from any source whatsoever, and may endorse checks, drafts and notes in its behalf and full discharge for the same to give." (Sgd.) Chester N. Farr, Jr.

Sworn to before me this 16th day of June, 1921. (Sgd.) May E. O'Rourke, [Seal.] Notary Public.

AFFIDAVIT OF FREDERIC D. McKENNEY.

[Filed June 18, 1921.]

I, Frederic D. McKenney, resident of the City of Washington, in the District of Columbia, being first duly sworn, depose and say:

That I am a member of the bar of the Supreme Court of the District of Columbia, of the Court of Appeals of the District of Columbia and also of the Supreme Court of the United States, and 164 have been engaged in the general practice of the law at the bars of each one of the courts above mentioned for more than

twenty years last past; that since on or about the first day of April, 1920, I have been acting as the local counsel and attorney of record in the City of Washington, District of Columbia, for The Pusey and Jones Company, above named respondent, in connection with its claim against the United States Shipping Board Emergency Fleet Corporation to recover in favor of said company "just compensation" for the construction by it of some thirty-four ships of large size, which construction was made and the right to compensation arose under the provisions of the Act of Congress of June 15, 1917, and acts amendatory thereof and supplemental thereto; that in the course of such employment I had occasion to examine in considerable detail numerous statements, including balance sheets, taken from the books of account of the company which were furnished to me from time to time by Mr. Charles Kimmich, formerly managing director of The Pusey and Jones Company, so that I might familiarize myself with the many things done by the respondent, The Pusey and Jones Company, at the instance of and for the United States Shipping Board Emergency Fleet Corporation; that over a considerable period of time I participated in numerous conferences with officials of the Emergency Fleet Corporation looking to an adjustment of the company's claim for "just compensation," and thereafter, in association with other counsel representing The Pusey and Jones Company, I prepared and filed first in the Supreme Court of the District of Columbia a certain bill of complaint in case of The Pusey and Jones Company, plaintiff, v. United States Shipping Board Emergency Fleet Corporation, defendant, in equity, No. 38,163, copy of which bill of complaint and accompanying exhibits, consisting of printed pages 1 to 48, inclusive, and 3a 165 to 87a, inclusive, is hereto attached, marked "Exhibit A" and made a part of this affidavit.

To the averments of this bill the defendant, United States Shipping Board Emergency Fleet Corporation filed answer and upon the issues thus raised hearings were had and the case taken under advisement by his Honor Justice Siddons, Associate Justice of the Supreme Court of the District of Columbia. Thereafter decree was entered in the cause on or about the third day of September, 1920, enjoining the defendant, United States Shipping Board Emergency Fleet Corporation, until the *the* further order of the court, from taking any steps to foreclose the mortgage dated August 2, 1918, which mortgage is set forth at large at page 38a of said Exhibit A, hereto attached.

A true copy of said decree is herewith appended, marked "Exhibit B."

Subsequently, in conjunction with other counsel, I prepared and filed in the Court of Claims of the United States a proceeding entitled The Pusey and Jones Company v. The United States, being case number 15-A on the general jurisdiction docket of said Court of Claims. A copy of the petition and accompanying exhibits is hereto attached and made a part hereof.

In said petition The Pusey and Jones Company claimed as "just compensation" due to it for and on account of the construction in its yards the sum of \$14,328,839.31, the bases of such claim being particularly set forth in detail in the recitals contained in said petition, marked "Exhibit C," and attached hereto, and are summarized at pages 46 to 48, inclusive.

The United States failed to demur or plead specially to the averments of this petition and the case is at present at issue on the statutory traverse, and hearings are expected to be held during the course of the coming summer, at which hearings the proofs necessary to support the above claim are expected to be adduced.

As counsel of record for The Pusey and Jones Company in the two cases above mentioned, and upon the facts made known to me by said Charles Kimmich and the auditors of said company and the various documents laid before me, I certify that in my opinion The Pusey and Jones Company is entitled to recover and reasonably should expect to recover judgment of the Court of Claims in some sum of money substantially in excess of the sum of \$7,194,975.00, being the gross amount of the award by the United States Shipping Board Emergency Fleet Corporation, dated March 13, 1920. (Sgd.) Frederic D. McKenney.

Personally appeared before me Frederic D. McKinney this seventeenth day of June, A. D. 1921, and stated that he had read the foregoing affidavit and that the facts therein set forth are true to the best of his knowledge and belief. (Seal.) (Sgd.) Frederic N. Towers, Notary Public, D. C.

167 & 168 **EXHIBIT "A" TO AFFIDAVIT OF FREDERIC D. McKENNEY.**

In the Supreme Court of the District of Columbia.

In Equity. No. 38163.

THE PUSEY & JONES COMPANY, Plaintiff,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Defendant.

BILL OF COMPLAINT AND EXHIBITS.

McKenney & Flannery, Solicitors for plaintiff.

Charles E. Hughes, Frederic D. McKenney, Charles E. Hughes, Jr., John Spalding Flannery, Of Counsel.

169 In the Supreme Court of the District of Columbia.

In Equity. No. —.

THE PUSEY & JONES COMPANY, Plaintiff,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
Defendant.

BILL OF COMPLAINT.

To the Supreme Court of the District of Columbia:

Plaintiff states as follows:

1. Plaintiff, The Pusey & Jones Company, is a corporation duly incorporated, organized, and operating under the laws of the State of Delaware, having its main executive offices in the city of Wilmington, in said State, and is possessed of and is operating shipyards and plants suitable for the construction of steel vessels of large size at or in the immediate vicinity of both the city of Wilmington, in the State of Delaware, and the city of Gloucester, in the State of New Jersey.

Said plaintiff corporation, by virtue of a certain agreement of consolidation and merger, dated December 21, 1917, and in full effect from and at all times since January 21, 1918, is the successor in interest to, and is possessed of and entitled to assert and maintain possession of all assets and choses in action of every sort and

170 kind of the Pennsylvania Shipbuilding Company and the New Jersey Shipbuilding Company, each of which formerly was likewise a corporation duly incorporated, organized, and operating under the laws of said State of Delaware, and owned and operated the shipyards and plants located at or in the immediate vicinity of the city of Gloucester, State of New Jersey, above referred to, now owned and being operated by plaintiff.

Plaintiff, The Pusey & Jones Company, in its own corporate right, and as the successor in interest, by virtue of said agreement of consolidation and merger, of each said Pennsylvania Shipbuilding Company and New Jersey Shipbuilding Company, brings this, its bill of complaint, for and because of the matters and things hereinafter specified.

2. Defendant, United States Shipping Board Emergency Fleet Corporation, is a corporation duly incorporated under the laws of the District of Columbia on April 18, 1917, by and under the provisions and authority of section 11 of the act of Congress entitled "An Act to establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its territories and possessions and

with foreign countries," and for other purposes; approved September 7, 1916 (39 Stats., 728, 731), and is sued herein in its corporate capacity because of the matters and things hereinafter specifically set forth.

3. By act of Congress entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of War Expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen and for other purposes," approved June 15, 1917 (40 Stat., 182, ch. 29), as amended by the act of April 22, 1918 (40 Stat., 535, ch. 62), and the act of November 4, 1918 (40 Stat., 1022, ch. 201), it is provided, among other things, as follows, to wit:

"Emergency Shipping Fund.

"1. The President is hereby authorized and empowered. * * *

"(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind, and quantity usually produced or capable of being produced by such person.

"(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material, or take possession, lease, or assume control of, any street railroad, interurban railroad, or part thereof, cars and other equipment necessary to operation.

"(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

"(d) To acquire, construct, establish, or extend any plant, and in pursuance thereof, to purchase, requisition, or otherwise acquire title to or use of land improved or unimproved or interest therein; and to requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

172 "(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

* * * * *

"(g) In pursuance of the foregoing powers, or any of them, to make advance payments or loans of such amounts and upon such terms as the President may deem necessary and proper.

"2. Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order

shall take precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities or qualities of the ships or materials so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material, or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

"3. Whenever the United States shall cancel, modify, suspend, or requisition, any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall

173 be paid 75 per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section 24, paragraph 20, and section 145 of the Judicial Code.

"4. The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time:

"Provided, That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

"5. The word 'person' as used herein, shall include any individual, trustee, firm, association, company, corporation, or contractor.

"6. The word 'ship' shall include any boat, vessel, or submarine and the parts thereof.

"7. The word 'material' shall include stores, supplies and equipment for ships, and everything required for or in connection with the production thereof.

"8. The word 'plant' shall include any factory, workshop, warehouse, engine works; buildings used for manufacture, assembling, construction, or any process; any shipyard, drydock, marine railway, pier, or dockyard, and discharging terminal and any facilities or improvements connected with any of the foregoing descriptions of property.

"9. The words 'United States' shall include all lands and waters subject to the jurisdiction of the United States of America."

4. Pursuant to the authority so conferred and vested in him by and under the provisions of said act of June 15, 1917, as so amended, the President of the United States, by his Executive Order 174 of July 11, 1917, being Executive Order No. 2664, directed "that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction."

5. Acting upon and pursuant to the authority and power so delegated to and vested in it, the defendant, United States Shipping Board Emergency Fleet Corporation, by appropriate orders dated August 3, 1917, did requisition all power-driven cargo-carrying and passenger ships, above 2,500 tons dead-weight capacity, under construction in each of plaintiff's said yards and the materials, machinery, equipment, and outfit, and commitments for materials, machinery, equipment, and outfit necessary for their completion, and did require and direct plaintiff and the Pennsylvania Shipbuilding Company and New Jersey Shipbuilding Company severally to complete construction of the ships so requisitioned in their respective yards with all practicable dispatch, upon bases of compensation therefor, thereafter to be determined and paid by said defendant United States Shipping Board Emergency Fleet Corporation; said requisitioning orders, omitting headings and addresses, being in the words and figures following, to wit:

By virtue of an Act of Congress, approved June 15, 1917, entitled "An Act making appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes" and by authority delegated to the United States Shipping Board Emergency Fleet Corporation under Executive Order of the President, dated July 11, 1917, all power-driven cargo-carrying and passenger ships, above 2,500 tons d. w. capacity, under construction in your yard and certain materials, machinery, equipment, outfit, and commitments for materials, machinery, equipment, and outfit necessary for their completion are hereby requisitioned by the United States.

On behalf of the United States, by virtue of said Act and said Order, you are hereby required to complete the construction of said requisitioned ships under construction and will prosecute such work with all practicable dispatch.

The compensation to be paid will be determined hereafter and will include ships, material, and contracts requisitioned.

You will furnish immediately general plans and detail specifications of the ships requisitioned, and copies of contracts and all supplemental agreements in relation thereto and full particulars as to owner, date of completion, payments made to date, amounts still

due and any other information necessary to a fair and just determination of the obligations of the Emergency Fleet Corporation in taking over these ships and contracts.

You will report immediately whether any additional contracts are under consideration and their character and extent, and will not enter into any additional contracts or commitments with respect to merchant tonnage without express authority from this corporation. (Sgd.) W. L. Capps, General Manager United States Shipping Board Emergency Fleet Corp.

Washington, D. C., August 3, 1917.

6. On said August 3, 1917, plaintiff and said Pennsylvania Shipbuilding Company and said New Jersey Shipbuilding Company had in their several yards under construction forty-five (45) vessels and certain materials, machinery, equipment, and outfit therefor which fell within the description and purview of said requisitioning order, said vessels, materials, machinery, equipment, and outfit being distributed among the several yards and said vessels being of the type and of about the tonnage here set forth the hull numbers, given for purposes of identification, being the yard and contract numbers of the respective hulls to which they apply, to wit:

Yard.	Type.	Tonnage.	Total.
(a) The Pusey & Jones Co., Wilmington, Del.			
Hulls 1001 to 1006.....	6-4000 cargo	24,000	
1007 to 1011.....	8-4300 "	34,400	
		<hr/>	58,400
(b) Pennsylvania Shipbuilding Co., Gloucester, New Jersey.			
Hulls 1 to 6.....	6-7000 tanker	42,000	
13 and 14.....	2-7500 cargo	15,000	
7 to 12)	11-12500 "	137,500	
and 15 to 19)		<hr/>	194,500
(c) New Jersey Shipbuilding Co., Gloucester, N. J.			
Hulls 201 to 212.....	12-5000 "	60,000	
		<hr/>	312,900

177 7. On said 3rd day of August, 1917, of the forty-five (45) vessels so under construction, the Cunard Steamship Company, Limited, a corporation existing under the laws of the United Kingdom of Great Britain and Ireland, was the then contracting owner of seventeen (17). Of the remaining twenty-eight (28) the Bulk Oil Transports, Inc., a corporation, was the then contracting owner of ten (10); Mannes Steamship Corporation, a corporation, of eight (8); Continental Transportation & Oil Company, a corporation, of one (1); and one Christoffer Hannevig, a citizen of Norway, of the remaining nine (9).

8. Subsequent to said August 3, 1917, the defendant, United States Shipping Board Emergency Fleet Corporation, cancelled then existing orders for the construction of eleven (11) of said forty-five (45) vessels, to wit, Pennsylvania Shipbuilding Company's hulls numbered 13 and 14, and New Jersey Shipbuilding Company's hulls numbered 204 to 212, both inclusive, aggregating 60,000 deadweight tons, leaving the approximate deadweight tonnage constructed and to be constructed as follows:

Yard.		Type.	Tonnage.	Total.
(a) The Pusey & Jones Co., Wilmington, Del.				
Hulls	1001 to 1006.....	6-4000 cargo	24,000	
	1007 to 1014.....	8-4300 "	34,400	
				58,400
(b) Pennsylvania Shipbuilding Co., Gloucester, New Jersey.				
Hulls	1 to 6.....	6-7000 tanker	42,200	
	7 to 12)			
	15 to 19)	11-12500 cargo	137,500	
				179,500
(c) New Jersey Shipbuilding Co., Gloucester, N. J.				
Hulls	201 to 203.....	3-5000 "	15,000	
				15,000
				252,900

178 9. Of the thirty-four remaining vessels requisitioned by the defendant, United States Shipping Board Emergency Fleet Corporation, the construction of which was continued under the direction and supervision of defendant, United States Shipping Board Emergency Fleet Corporation, upon its legal obligation and solemn assurance to award and make just compensation in all respects therefor, thirty-three (33) have been fully completed and delivered to, and delivery thereof has been formally and finally accepted by, defendant, United States Shipping Board Emergency Fleet Corporation, and but one (1) is yet under construction, same being well advanced toward completion.

10. Under date of May 14, 1918, plaintiff entered into an agreement in writing with defendant, United States Shipping Board Emergency Fleet Corporation, wherein was recited, among other things, the consolidation and merger of said The Pusey & Jones Company, the Pennsylvania Shipbuilding Company and New Jersey Shipbuilding Company into a single consolidated corporation called "The Pusey & Jones Company," possessed of all rights, privileges, powers, franchises, and all property, real, personal and mixed of each of said three corporations; that said three corporations on and after August 3, 1917, were engaged in the work of building com-

mandeered ships at their plants at Gloucester, New Jersey, and Wilmington, Delaware; that said consolidated corporation, The Pusey & Jones Company, was the owner in fee simple, free of all liens and encumbrances, with minor exceptions therein set forth, of certain tracts of land particularly therein described upon which said ship-

building yards and plants were located, together with the improvements and personal property located thereon; that said

179 The Pusey & Jones Company since January 21, 1918, had been and then was engaged in the work of building commandeered ships at said plants, and, in order to expedite such work, desired to secure a loan of money from said "Fleet Corporation," which loan, in a sum not to exceed \$5,000,000, said "Fleet Corporation" was willing to make; and it was agreed that said "Fleet Corporation" should advance to The Pusey & Jones Company not to exceed \$5,000,000 upon certain terms and conditions, among others, that such advances should be secured by a bond, and a mortgage to be and constitute a lien upon all property, real and personal, then owned or thereafter acquired by plaintiff during the life of said agreement and should be repaid (a) by the "Fleet Corporation" withholding and crediting as payment all or so much as might be necessary of the amount to be awarded to plaintiff as just compensation for the construction of said vessels which should be in excess of the actual cost of their construction, with (b) other provisions for the repayment of any balances which might remain due from plaintiff after such application; as will more fully and in greater detail appear from a copy of said agreement attached hereto marked "Exhibit A" and made a part of this bill of complaint as fully as though set forth herein.

11. Pursuant to said agreement and in accord with its terms, defendant, United States Shipping Board Emergency Fleet Corporation, did advance to plaintiff, The Pusey & Jones Company, for the purposes aforesaid, the sum of \$5,000,000, and plaintiff on or about August 2, 1918, did execute and deliver to defendant its bond in the sum of \$5,000,000 and did likewise execute and deliver to de-

180 fendant, who did duly record same, its blanket mortgage constituting a lien upon all of plaintiff's property, real and personal, then or thereafter acquired, until said indebtedness should be paid in the manner provided in said agreement and reiterated in said bond; all of which will more fully and in greater particularity and detail appear upon inspection of copies of said bond and mortgage hereto annexed, marked, respectively, "Exhibit B" and "Exhibit C," and made part of this bill of complaint as fully as if set forth at large herein.

12. By Resolution adopted at a session of the Board of Trustees of the defendant United States Shipping Board Emergency Fleet Corporation, on or about the 13th day of March, 1920, said defendant did award to plaintiff as its just compensation for the construction of said thirty-four (34) vessels, and on account of the eleven (11) vessels, contracts for the construction of which, as above stated, had been canceled, the sum of \$7,194,975, which amount was and is the sum over and above the costs of constructing the vessels which have been constructed, and the costs and outlays actually incurred

in preparing to construct the vessels, contracts for which said defendant had ordered to be canceled.

Said Resolution evidencing such award in favor of plaintiff reads in its entirety as follows, to wit:

"Resolution of the Board of Trustees of the United States Shipping Board Emergency Fleet Corporation.

"Whereas, pursuant to the Emergency Shipping Fund provisions of the Urgent Deficiencies Appropriation Act approved June 15, 1917 (40 Stat., 182), and Executive Order of the President dated July 11, 1917 (No. 2664), the United States Shipping Board Emergency Fleet Corporation on or about August 3, 1917, issued 181 its requisitioning orders directing the shipbuilding companies now comprised in the Pusey & Jones Company, a consolidated corporation organized and existing under the laws of the State of Delaware, to discontinue ship construction for private account in their respective shipyards and to continue such work of construction for account of the United States Shipping Board Emergency Fleet Corporation, upon such terms of just compensation as should thereafter be determined by the corporation pursuant to paragraph 3 of said Emergency Shipping Fund provision; and

"Whereas, the companies embraced within the purview of the said requisition orders were the Pennsylvania Shipbuilding Company, the New Jersey Shipbuilding Company, and the Pusey & Jones Company of Wilmington, Delaware, which said companies were at the time committed to a ship construction program of forty-five (45) vessels distributed to the several years and of the type and tonnage as follows, to-wit:

Yard.	Type.	Tonnage.	Total.
Pennsylvania (19).			
Hulls 1 to 6.....	6-7000	tanker	42,000
13 and 14.....	2-7500	cargo	15,000
7 to 12.....	11-12500	"	137,500
and 15 to 19.....			194,500
New Jersey (12).			
Hulls 201 to 212.....	12-5000	"	60,000
Wilmington (14).			
Hulls 1001 to 1006.....	6-4000	"	24,000
1007 to 1014.....	8-4300	"	34,400
			58,400
			312,900

"And whereas, the United States Shipping Board Emergency Fleet Corporation subsequently agreed with the Pennsylvania Shipbuilding Company, to-wit, in January, 1918, to pay the said company as the just compensation for the construction of the vessels described as Hulls Nos. 15 to 19, both inclusive, the actual

182 cost thereof, together with a profit to the shipyard of \$204,000 for each vessel with the proviso that in the event that the actual cost of each vessel should be less than \$2,040,000.00, said corporation and said ship-building company should share equally in the saving; and

"Whereas, the United States Shipping Board Emergency Fleet Corporation also agreed with the New Jersey Shipbuilding Company on or about December 26, 1917, to pay the said shipbuilding company as the just compensation for the construction of the vessels described as Hull Nos. 201 to 212, both inclusive, the actual cost thereof together with a profit of \$17.50 per deadweight ton, with the proviso that in the event that the cost should be less than \$175.00 per deadweight ton, the corporation and said shipbuilding company should share equally in the saving; and

"Whereas, the above-mentioned ship construction program was subsequently modified by the United States Shipping Board Emergency Fleet Corporation by the cancellation of the construction of certain of said vessels, to-wit, Pennsylvania Hull Nos. 13 and 14 and New Jersey Hull Nos. 203 to 212, both inclusive, being 11 vessels of an aggregate deadweight tonnage of 60,000 tons, leaving the tonnage actually constructed or to be constructed by the Pusey & Jones Company as follows:

Yard.			Type.	Tonnage.	Total.
Pennsylvania.					
Hulls	1 to	6.....	6-7000 tanker	42,000	
	7 to	12.....	11-12500 cargo	137,500	
	and 15 to	19.....			
				—————	179,500
New Jersey.					
Hulls	201 to	203.....	3-5000	“	15,000
					15,000
Wilmington.					
Hulls	1001 to	1006.....	6-4000	“	24,000
	1007 to	1014.....	8-4300	“	34,400
				—————	58,400
					—————
					252,900

183 "And whereas, the United States Shipping Board Emergency Fleet Corporation has since August 3, 1917, advanced to the Pusey & Jones Company for plant construction and other purposes large sums of money, exceeding \$6,000,000.00, secured or partly secured by mortgage on properties of said company, and has likewise since August 3, 1917, currently supplied to the Pusey & Jones Company (or its predecessor companies), the funds requisite to carry on said ship construction and now desires to fix and award the just compensation properly to be allowed to the Pusey & Jones Company for the work of constructing vessels for the United States Shipping Board Emergency Fleet Corporation as aforesaid, including therein proper allowances for the cancellation of certain of said construction and for amortization of the investment in and deprecia-

tion of, the plants and facilities and appurtenances thereto employed in said construction, including the elements of amortization and depreciation allocable to the cost of vessels in the Pennsylvania and New Jersey shipyards as to the compensation for which the Emergency Fleet Corporation has heretofore entered into agreements with the Pennsylvania Shipbuilding Company and the New Jersey Shipbuilding Company respectively; and

"Whereas, prior to, on and at all times subsequently to August 3, 1917, Christoffer Hannevig, a citizen of Norway, now a resident of New York City, New York, has owned and controlled the companies engaged in the work of ship construction as aforesaid, including the present Pusey & Jones Company, and also prior to August 3, 1917, controlled, either personally or through various corporations, the contracts for the construction of the ships to which said shipbuilding companies were committed, and under, in connection with, or through the sale, transfer, assignment, or novation of certain of said

184 contracts, the said Hannevig prior to August 3, 1917, either personally or through companies controlled by him, collected various sums of money aggregating \$5,627,000.00, which sums have heretofore been fully reimbursed by the United States Shipping Board Emergency Fleet Corporation to the persons, firms, or corporations in interest as of August 3, 1917; and

"Whereas, it now appears to the trustees of this corporation that of the said moneys so collected by Hannevig the sum of \$3,776,737.00 is properly to be regarded as applicable to the just compensation which the Pusey & Jones Company is entitled to receive for work of ship construction, and was, in the opinion of the trustees of this corporation, wrongfully withheld or diverted by the said Hannevig from the assets of the Pusey & Jones Company (or its predecessor companies) to his own use; and

"Whereas, the Pusey & Jones Company has heretofore constructed and delivered to the Fleet Corporation, 26 of the vessels embraced in the present construction program, namely Pennsylvania Hull Nos. 1 to 12, inclusive, New Jersey Hull Nos. 201 to 203, inclusive, and Wilmington Hull Nos. 1001 to 1011, both inclusive, and has still to construct and deliver 8 of said vessels, namely, Pennsylvania Hulls 15 to 19, both inclusive, and Wilmington Hull Nos. 1012 to 1014, both inclusive; and

"Whereas, the United States Shipping Board Emergency Fleet Corporation has caused careful examination and investigation to be made, extending over a long period of time, with respect to the rights of the Pusey & Jones Company in the premises and with respect to the obligation of the Emergency Fleet Corporation to award just compensation to said company and has reached a conclusion and determination:

"Now, therefore be it resolved, That an award of just compensation be, and the same is hereby made as follows:

185 "1. The United States Shipping Board Emergency Fleet Corporation is obligated to pay the actual cost of the work of ship construction performed, or to be performed, by the said Pusey & Jones Company.

"2. The United States Shipping Board Emergency Fleet Corporation hereby allows and awards to the Pusey & Jones Company as the just compensation for and in connection with the work of constructing vessels for account of said corporation the following:

"(a) On vessels covered by Emergency Fleet Corporation agreements as aforesaid:

3-5,000 d. w. t. vessels (N. J. Yd.) 15,000 tons \$17.50	
per ton.....	\$262,500.00
5-12,500 d. w. t. vessels (Pa. Yd.) 62,500 tons \$16.32	
per ton.....	1,030,000.00

On vessels not covered by Emergency Fleet Corporation agreements:

6-4,300 d. w. t. vessels (Wil. Yd.) 34,000 tons \$16.00	
per ton.....	550,400.00
6-4,000 d. w. t. vessels (Pa. Yd.) 24,000 tons \$16.00	
per ton.....	384,000.00
6-7,000 d. w. t. vessels (Pa. Yd.) 42,000 tons \$16.00	
per ton.....	672,000.00
6-12,500 d. w. t. vessels (Pa. Yd.) 75,000 tons \$16.00	
per ton.....	1,200,000.00

(b) As amortization of investment in plant facilities and appurtenances thereto, including therein a factor allocable to the plant facilities and appurtenances used in the construction of vessels in the Pennsylvania and New Jersey shipyards as to which the Emergency Fleet Corporation has heretofore entered into agreements with the Pusey & Jones Company (or its predecessors) as aforesaid..... 1,500,000.00

(c) As depreciation of plant and appurtenances, including therein a factor allocable to plant and appurtenances used in the construction of vessels in the Pennsylvania and New Jersey shipyards as to which the Emergency Fleet Corporation has heretofore entered into agreements with the Pusey & Jones Company (or its predecessors) as aforesaid..... 1,375,000.00

(d) As cancellation fees on 11 vessels (60,000 d. w. tons) construction of which has been heretofore canceled by the Emergency Fleet Corporation 231,975.00

\$7,194,975.00

186 "3. From said \$7,194,975.00 there shall be deducted, and is hereby deducted, the sum of \$3,776,737.00, which last-mentioned sum represents amounts which should have been applied as a part of the Pusey & Jones Company's compensation for the

construction of certain of the above-mentioned vessels, but which amounts were withdrawn or withheld by Christoffer Hannevig from the assets of said company as aforesaid, leaving as the net balance to be allowed to the Pusey & Jones Company for the entire work of construction, both completed and to be completed, the sum of \$3,418,238.00.

"4. Said balance of \$3,418,238.00, which includes the per ton fees already earned and still to be earned on account of ship construction as hereinbefore provided, shall, as the same has or shall accrue, be applied in the reduction of the indebtedness of the Pusey & Jones Company to the United States Shipping Board Emergency Fleet Corporation on account of advances heretofore made by said corporation to the Pusey & Jones Company (or its predecessors), for plant construction and other purposes; provided, however, that in the event the Pusey & Jones Company declines to accept the award herein and hereby made, only 75 per centum of said award shall be available to the Pusey & Jones Company, in which event, 75 per cent of the total award of just compensation of \$7,194,975.00, or \$5,396,231.25, less the amount of \$3,776,737.00 withheld or withdrawn by said Hannevig as aforesaid from the assets of the company or a net balance of \$1,619,494.25, is to be applied as aforesaid in the reduction of the indebtedness of the Pusey & Jones Company to the United States Shipping Board Emergency Fleet Corporation and the said Pusey & Jones Company shall be remitted as to its claims for further compensation to the remedy provided in paragraph 3 of the Emergency Shipping Fund Provisions of June 15, 1917 (40 Stat., 182).

"Resolved further, That the Secretary of the corporation
187 be, and he is hereby, instructed to communicate a copy of this resolution embodying the aforesaid award, certified under the seal of this corporation, to the Pusey & Jones Company."

13. Plaintiff, for the purpose of obtaining prompt adjustment of the matters between it and said defendant, expressed its willingness to accept said sum of \$7,194,975 allowed and awarded as aforesaid as in satisfaction of its claim for just compensation and requested said defendant, United States Shipping Board Emergency Fleet Corporation, to apply the same to the full extent of the amount thereof allocable to or payable on account of the thirty-three (33) vessels which have been wholly completed and delivered to and accepted by said defendant and the eleven (11) vessels the construction of which was canceled as aforesaid, if such amount were necessary for the payment in full of plaintiff's said indebtedness to defendant, represented by the bond for \$5,000,000 secured by the blanket mortgage which constitutes a lien upon all the property real and personal including the shipyards and plants of plaintiff as aforesaid, and to the extent of the application or applications so made, to release the properties of plaintiff from the lien of said mortgage, as by the provisions of said agreement of May 14, 1918 (Exhibit A), and by the terms of said bond (Exhibit B) and of said mortgage (Exhibit C) given to secure same, said defendant

expressly agrees to do. But said defendant, United States Shipping Board Emergency Fleet Corporation, without any just ground therefor, or any authority, either in law or equity, for so doing, continues to withhold from plaintiff the entire sum of \$7,194,975, so awarded to it as and for its just compensation for its property used and services rendered in the construction and delivery to said defendant of the thirty-three (33) vessels heretofore delivered to and accepted by said defendant and for the one (1) vessel under construction and yet to be delivered, and, though repeatedly requested so to do, refuses to make application of any part thereof in payment of or on account of plaintiff's said bond and mortgage indebtedness unless and until plaintiff shall first give its assent to the arbitrary, unjust and wholly illegal attempt on the part of defendant to deduct from the amount which said defendant, United States Shipping Board Emergency Fleet Corporation, has formally declared to be due and has awarded as plaintiff's "just compensation for and in connection with the work of constructing vessels" for said defendant, the sum of \$3,776,737.00 alleged by defendant to represent "amounts which should have been applied as a part of the Pusey & Jones Company's compensation for the construction of certain of the above-mentioned vessels, but which amounts were withdrawn or withheld by Christoffer Hannevig from the assets of said company," which assent plaintiff has refused and still refuses to give.

14. Said sum of \$3,776,737 was not, as recited in said resolution, nor was any thereof, wrongfully or otherwise withheld or diverted by said Hannevig from the assets of the plaintiff or either of its predecessor companies to his own use or otherwise; said sum never was, nor was any thereof, part of the assets of the plaintiff or of either of its predecessor companies, nor was said sum or any thereof collected by said Hannevig as any part of the assets of plaintiff or either of its predecessor companies, nor had they or any of them, any right, title, or interest therein, but upon information and belief, the same was at all times the property of said Hannevig, or of those for whom he acted as agent or broker, and was received by him, either for his own account or as such agent or broker, in consideration of the assignment to the Cunard Steamship Company, Limited, and Continental Transportation and Oil Company of the contracts for the construction of eighteen (18) of the above-mentioned ships, to wit, Pennsylvania Shipbuilding Company's hulls Nos. 1 to 10, both inclusive, and The Pusey & Jones Company's hulls Nos. 1001 to 1008, both inclusive.

Further, upon information and belief, neither said sum of \$3,776,737 nor any part thereof was at any time paid to said Hannevig nor to anyone acting in, for, or on said Hannevig's behalf, either by said defendant United States Shipping Board Emergency Fleet Corporation, or under or by its direction or authority, nor has said sum or any part thereof been paid by said defendant, or under or by its direction or authority to this plaintiff or to any one of its predecessor companies or to anyone acting in, for, or on its or their

behalf, and if, as stated in said Resolution of the Board of Trustees of the United States Shipping Board Emergency Fleet Corporation, above set forth in full, said sum of \$3,376,737.00, or any part thereof, has been "fully reimbursed by the United States Shipping Board Emergency Fleet Corporation to the persons, firms or corporations in interest as of August 3, 1917"; such so-called reimbursement was made without the request or assent or even knowledge of this plaintiff and, if in fact made at all, was made to those with whom plaintiff was not in privity, and to "persons, firms, or corporations" to whom plaintiff was not in anywise or any manner indebted either on account of or in connection with the contracts for the construction of the ships or vessels in said resolution and award specified, or on any other account whatsoever.

Plaintiff is informed and believes and therefore avers that said defendant and its Board of Trustees was and is without lawful power of any sort or kind to inquire into or ascribe to the fact of ownership by said Christoffer Hannevig of the majority or even of
190 practically all of the issued and outstanding shares of capital stock of or in this plaintiff corporation any such consequences as said defendant by its said Resolution awarding just compensation has ascribed or attributed thereto, and is without lawful power of any sort or kind to make any deduction from the amount of just compensation due and awarded to this plaintiff for and on account of work done and services rendered by it subsequent to August 3, 1917, in connection with the construction of the vessels above referred to, because of things done or contracts or agreements made concerning, or profits derived by said Hannevig, either directly or indirectly, from sales or other transactions involving the contracts for the construction of all or any of said vessels, with which things done, or contracts or agreements made, or profits derived, this plaintiff had no connection, and from which it at no time derived any benefit or advantage whatsoever.

Further, also upon information and belief, plaintiff avers that each and every of the things done and contracts or agreements made or profits enjoyed by said Christoffer Hannevig, if any there were, had been fully and completely done, made or received and enjoyed by said Christoffer Hannevig, long prior to August 3, 1917, on which date said defendant United States Shipping Board Emergency Fleet Corporation first became concerned in the affairs of this plaintiff.

Plaintiff is advised by counsel and upon such advice avers, that so much of said Resolution of the Board of Trustees of the United States Shipping Board Emergency Fleet Corporation as purports to make any deduction from the total amount of just compensation allowed and awarded to this plaintiff for and on account of its work
191 done and services rendered in connection with the construction of the vessels aforesaid, is without legal force or effect; otherwise its direct and necessary consequence would be to take the private property of this plaintiff for the general benefit and use of the public without in truth making just compensation there-

for, and also to deprive this plaintiff of its property without due process of law, consequences expressly forbidden and prohibited by the provisions of Amendment V of the Constitution of the United States.

15. Upon information and belief plaintiff avers that the original contracts for nine (9) of said ships, to wit, for Pennsylvania Shipbuilding Company's hulls Nos. 4 to 6, both inclusive, and Nos. 9 and 10, and for The Pusey & Jones Company's hulls Nos. 1005 to 1008, both inclusive, were made between said shipbuilding companies and either the above-mentioned Bulk Oil Transports, Inc., or said Hannevig personally; that in the cases where such original contracts were made with said Bulk Oil Transports, Inc., said corporation subsequently assigned the same to said Hannevig, either for his own account or the account of others for whom he was acting either as agent or broker; said Hannevig thereafter assigned to said Cunard Steamship Company, Limited, all of said contracts. The contracts for the remaining nine (9) of said ships, to wit, Pennsylvania Shipbuilding Company's hulls Nos. 1 to 3, both inclusive, and Nos. 7 and 8, and The Pusey & Jones Company's hulls Nos. 1001 to 1004, both inclusive, were bought by said Hannevig from certain citizens of Norway at an aggregate profit to said Norwegian citizens of \$1,850,263 over and above the contract prices, and subsequently said Hannevig assigned same to said Cunard Steamship Company, Limited, with the exception of the contract for Pennsylvania Steamship Company's hull No. 2, which he assigned to Continental Transportation & Oil Company. As consideration for the assignment of said eighteen (18) vessels by said Hannevig, the Cunard Steamship Company, Limited, and said Continental Transportation & Oil Company together, paid to said Hannevig the aggregate sum of \$5,627,000, of which \$1,850,263 represented the profits of certain Norwegian owners of nine of said vessels and \$567,000 represented the profits of the Thor O. Hannevig Company, a Norwegian corporation, which was the then actual owner of the contracts covering The Pusey & Jones Company's hulls Nos. 1005 to 1008, both inclusive. Said sums of \$1,850,263 and \$567,000, or the total sum of \$2,417,263 of said sum of \$5,627,000 was collected and received by said Hannevig solely as the agent for the owners of said thirteen (13) vessels. The remaining sum of \$3,209,737 constituted the personal profits of said Hannevig as owner and vendor of the contracts covering the remaining vessels above specified. No part of said sums or any of them ever in fact passed to or became a part of the assets of plaintiff, or either of its predecessor companies, nor had nor has the plaintiff, or either of its predecessor companies, any right, title, or interest therein or claim thereto.

16. With respect to each of the above-mentioned seventeen (17) ships which were under construction and requisitioned by said defendant, United States Shipping Board Emergency Fleet Corporation, on said 3rd day of August, 1917, of which said Cunard Steamship Company, Limited, by virtue of the assignments aforesaid, was

the then contracting owner, with the view and for the purpose of providing and making just compensation to said Cunard Steamship Company, Limited, for each thereof as required in and by said Urgent Deficiencies Appropriations Act of June 15, 1917, as amended, 193 and the Executive Order of July 11, 1917, defendant, United States Shipping Board Emergency Fleet Corporation, as party of the first part, Cunard Steamship Company, Limited, as party of the second part, and said Pennsylvania Shipbuilding Company, or plaintiff, The Pusey & Jones Company, as party of the third part, on or about the 28th day of January, 1918, entered into seventeen contracts in writing, one of such contracts applying to each of said seventeen (17) ships. Of such seventeen contracts in writing so made and entered into, nine (9), in which Pennsylvania Shipbuilding Company was named as party of the third part, were and are identical in all terms and provisions, excepting only the name of "original purchaser," dates, hull or contract numbers and the several amounts stated to have been paid by and provided to be paid to the contracting owner, and each thereof, in its terms and with the exceptions noted conforms in every respect with the copy of contract covering Pennsylvania Shipbuilding Company's hull No. 1, hereto annexed, marked "Exhibit D."

The remaining eight contracts in writing so entered into, and in which the plaintiff is named as party of the third part, with like exceptions, were and are identical in terms and provisions and in all respects conform to the copy of contract covering The Pusey & Jones Company's Hull No. 1001, hereto annexed, marked "Exhibit E."

Each of said forms of contracts so marked Exhibits "D" and "E" and so annexed hereto and filed herewith are made parts of this bill of complaint for every and all purposes, as fully and completely as though each of said seventeen contracts were set forth at large herein, and plaintiff will produce and tender for inspection at any hearing hereof the original of each and every of said seventeen contracts if same shall be desired or called for.

194 17. By the written terms of each of said seventeen (17) contracts of January 28th, 1918, in which the United States Shipping Board Emergency Fleet Corporation is named as party of the first part and as such duly signed and executed the same, it is recited that under separate contracts applicable to the several transactions respectively, the Cunard Steamship Company, Limited, had become the owner of the interest of the "Original Purchaser" and of the successive, or intermediate assignees in each of said seventeen (17) vessels and the contracts with the particular Shipbuilding Company having the vessels under construction; that said Cunard Steamship in each instance had paid to the then owner of the contract a specified sum of money therefor, the sums so paid and specified in such connection being as follows, to wit:

Pusey & Jones Contract No.	1001	\$288,000.00
" " " "	1002	248,000.00
" " " "	1003	167,000.00
" " " "	1004	147,000.00
" " " "	1005	195,000.00
" " " "	1006	195,000.00
" " " "	1007	204,400.00
" " " "	1008	204,400.00
Pennsylvania Shipbuilding Contract No.	1	987,000.00
" " " "	3	586,000.00
" " " "	4	388,000.00
" " " "	5	282,000.00
" " " "	6	563,000.00
" " " "	7	750,000.00
" " " "	8	593,750.00
" " " "	9	812,500.00
" " " "	10	261,250.00

195 Said sums, totaling the sum of \$6,874,300, in each and every instance covered and included the numerous progress payments already paid or then accrued due to be paid to the appropriate shipbuilding company under the terms of the several construction contracts so purchased by the Cunard Steamship Company, Limited, as well as an amount agreed to be paid by way of profit, which represented the then market value of the particular vessel in its forward but uncompleted position. In such purchases by said Cunard Steamship Company, Limited, from the "Original Purchaser" or subsequent and intermediate assignees, said defendant, United States Shipping Board Emergency Fleet Corporation, had no part or place and made no payment of any sort or kind to said "Original Purchaser" or to any of said subsequent or intermediate assignees, and particularly made no payment of any sort or kind, nor any contribution whatever on account of any payment which was made by said Cunard Steamship Company, Limited, to said Christoffer Hannevig, either on his personal account as "Original Purchaser" or as an intermediate assignee, or as agent or broker for any such.

Each and every of said contracts of January 28, 1918, above referred to, also recites the requisitioning by defendant, United States Shipping Board Emergency Fleet Corporation, of each of said seventeen (17) vessels and the direction by said Corporation to this plaintiff or to said Pennsylvania Shipbuilding Company to complete the same; the fact that the Urgent Deficiency Act (being the act of June 15, 1917, heretofore referred to) provides that just compensation shall be paid to the parties from whom ships were so requisitioned; that said defendant and the shipbuilding company concerned, now this plaintiff, had "agreed on the just compensation to be paid

196 for the completion of (each of) said ship" (s); that said Cunard Steamship Company, Limited, had presented in each instance its claim for compensation, in varying sums, "for moneys paid on account for the foregoing (specified) ship, in accordance with the provisions of the contract (therefor), and also for certain

expenses connected with the construction of said ship and the acquisition of the contract therefor, which sum includes interest to December 31, 1917;" that the "Fleet Corporation" and said "Cunard Line" are desirous of fixing the amount of compensation to be paid to the latter, for "all its right, title, and interest in and to the said ship and the materials therefor;" and that each said Fleet Corporation, said Cunard Line, and the Shipbuilding Company named in the particular contract, were desirous of procuring releases applicable in the premises, to which end the "Cunard Line" represented and warranted that it was "the sole owner of the contract with the Shipbuilding Company, as described in the preamble, and that no other person, firm, or corporation had at the time of such requisitioning any title thereto or had or has any lien by way of mortgage or otherwise upon either the ship described in said contract, the materials therefor, or on the contract itself * * *;" that the said contract is a valid one; that the Cunard Line has paid the original purchaser or former owner or owners in full therefor; and the Shipbuilding Company likewise represented and warranted "that no other person, firm, or corporation other than the (said) Shipbuilding Company and the Cunard Line has any lien" upon said ship or the materials therefor.

Said contracts also recite that Cunard Line makes claim in accordance with the provisions of said Urgent Deficiency Act 197 "for compensation for all damages arising out of the said requisition order, in so far as it affects the said ship, the materials therefor, and the said contract" in a sum stated, varying in the case of each vessel; that the Fleet Corporation, the defendant herein, in accordance with the provisions of said Urgent Deficiency Act "and the Executive Order of July 11, 1917" (supra), had determined "that the just compensation to be paid to the Cunard Line for the satisfaction of the said claim," was the sum or amount particularly specified in Clause II of each of said seventeen (17) contracts.

V.

"The Cunard Line releases the Shipbuilding Company from all claims arising in any way out of the contract hereinabove referred to and specifically waives the delivery of the ship contracted for under the contract, either during the present war or thereafter, anything in the said contract to the contrary notwithstanding.

"The Shipbuilding Company hereby releases the United States, the Fleet Corporation and the Cunard Line and each of them from any and all claims arising out of the contract hereinabove referred to and specifically waives its rights, if any, to deliver to the Cunard Line or to any other person the ship contracted for or any other ship under said contract, either during the present war or thereafter, but nothing herein contained shall relieve the Shipbuilding Company from its obligation to deliver the said ship to the United States or relieve the Fleet Corporation from its obligation to the Shipbuilding Company to pay the compensation heretofore agreed to be paid by the Fleet Corporation.

VI.

"The Cunard Line hereby releases the United States and the United States Shipping Board Emergency Fleet Corporation and each of them from all liability with respect to said ship materials and contract arising out of the said Requisition Order of August 3, 1917, and acknowledges receipt in full of the claim hereinabove referred to."

198 All of which will the more fully and in greater detail appear marked upon inspection of either of said exhibits marked "D" or "E" which have been hereto attached and made a part of this bill of complaint as aforesaid.

Notwithstanding the express provisions of each of said seventeen (17) contracts in writing and of the particular agreements between the defendant, the United States Shipping Board Emergency Fleet Corporation, and plaintiff and its predecessor in interest, Pennsylvania Shipbuilding Company, by which the former acknowledged its obligation and expressly agreed to make just compensation to the latter for all work done by it in completing said several vessels, and the further fact that said defendant, United States Shipping Board Emergency Fleet Corporation, by its Board of Trustees, as above stated, has formally resolved that over and above "the actual cost of the work of ship construction performed, or to be performed, by the said Pusey & Jones Company" there should be and was allowed and awarded "to the Pusey & Jones Company as the just compensation for and in connection with the work of constructing vessels for account of said (United States Shipping Board Emergency Fleet) Corporation," the total sum of \$7,194,975, as heretofore and with greater particularity stated, said defendant, United States Shipping Board Emergency Fleet Corporation, and the several members of its Board of Trustees arbitrarily and in wanton disregard of plaintiff's just rights and the express requirements of said Amendment V of the Constitution of the United States,

199 and of the applicable provisions of existing statute law and Executive Orders persists in its and their publicly announced intention to deduct from the sum of \$7,194,975, allowed and awarded to plaintiff as its "just compensation" said sum of \$3,776,737, and with the deliberate purpose and view of compelling this plaintiff to submit to such unlawful, unwarranted, and unconscionable deduction persists in its before-mentioned refusal either to pay over to this plaintiff or to apply in reduction of the above-mentioned bond, any part of said sum of \$7,194,975 and to release pro tanto the properties of plaintiff from the lien of the mortgage to secure the same.

18. Because of the requisitioning of the shipyards and plants of plaintiff located at Wilmington, Delaware, and in the vicinity of Gloucester City, New Jersey, they being all of the shipyards and plants belonging to plaintiff, and because of the requirement by defendant that this plaintiff should proceed with all dispatch to complete for account of defendant the program of ship construction

above referred to, this plaintiff, since the 3d day of August, 1917, has been prevented from prosecuting its business of ship construction for private account, and with the exception of the construction of certain boats of small tonnage for the United States Navy, and the manufacture of certain papermaking machinery, both at its Wilmington yard and plant, plaintiff has been unable to either secure or turn out any work, other than the commandeered ships for the defendant herein, from which to derive any income.

Since said 3d day of August, 1917, to now, a period of more than three (3) years, said defendant has not paid to this plaintiff a single dollar by way of profit or compensation for the use of its shipyards, plants and organization, or by way of profit for the meritorious and admittedly valuable services rendered by it, with the result that plaintiff's credit has become so seriously impaired that it is unable to obtain the usual bond or surety for the prompt and certain delivery of vessels to be constructed, which usually and generally is required of shipbuilding companies engaging in the business of shipbuilding for private account; its executive and managerial staffs, and its labor force is rapidly, and with each passing day more and more rapidly, disintegrating and seeking employment elsewhere; its ways and machinery are falling into disrepair as well as disrepute; and unless this honorable court shall afford prompt relief in the premises, this plaintiff, notwithstanding the large sum of money due to it from the defendant herein, and the balance which undoubtedly is and will be due and payable to it after all necessary application shall have been made in satisfaction of its above-mentioned bond for \$5,000,000 and the release of the lien of the mortgage given to secure the same, will be forced into bankruptcy at an early date, and will suffer, and is even now suffering, irreparable and inestimable damages, for which none of the known and commonly practiced courses at law will or can afford adequate or even reasonable relief.

19. To relieve in some measure the well-nigh unbearable pressure and intolerable situation in which it has been put by the arbitrary, unjust, and unconscionable action of the defendant, in withholding payment of all and every part of the amount due and formally awarded to it as aforesaid, this plaintiff has sought to make sale of either one or both of its said shipbuilding yards and plants, and to that end has on two separate occasions entered into agreements of sale with willing and capable purchasers for the sale of its shipyard and plant in the vicinity of Gloucester City, New Jersey, each time at a price of less than one-half of the amount of cash actually invested by plaintiff therein, but in each case the proposed sale was necessarily conditioned upon the obtaining of action by the defendant, which would result in clearing the title from the existing lien of the blanket mortgage above referred to, but although individual members of the Board of Trustees of said defendant have repeatedly promised the co-ordinate action of the defendant in such regard, such action has not been forthcoming, and defendant now refuses either to satisfy its claimed debt, or to make appropriate application of any part of said award of "just

compensation" or in any wise or manner whatsoever to release or lighten the lien of the mortgage aforesaid on the property and corporate assets of this plaintiff.

20. By reason of each and every of such wrongful actions on the part of said defendant, and by reason of other such actions too numerous to narrate, even briefly within the reasonable limits of this bill of complaint, and by reason of the resulting inability on part of plaintiff to obtain contracts for present or future ship-construction work, and by reason of its inability to make sale of its ship-yards and plants or otherwise relieve the ever-increasing impairment of credit from which plaintiff has suffered for more than six (6) months last past and will continue to suffer until same is completely ruined or irretrievably lost, and because of threats on the part of defendant to apply for a receiver of the assets of this plaintiff, and to foreclose the lien of the mortgage above referred to, and because of inability of plaintiff to obtain and give acceptable security for the completion and delivery of vessels which otherwise it would be able to contract to construct in one or other of its shipyards, and because its executive staff and labor force is rapidly diminishing and soon, unless remedied, will be non-existent, and in order that plaintiff may be enabled properly to provide for the maintenance of its properties and plants, and may be enabled either to operate its said plants for its own benefit, or to sell same upon terms which even though inadequate, by reason of the difficulties with which the arbitrary, unjust, unwarranted, inequitable, and unbusinesslike action of the defendant, has caused plaintiff to be beset, said plaintiff may be moved to accept, and because plaintiff conceives that it is entitled to an immediate accounting with defendant, and to the immediate satisfaction and cancellation of its said bond for \$5,000,000 and to the release of record of the mortgage dated August 2, 1918, given to secure same, and because the refusal of defendant, United States Shipping Board Emergency Fleet Corporation, either to satisfy said mortgage or to apply in partial satisfaction thereof any part of the sum of \$7,191,975 awarded to it as just compensation, and to release in whole or in part the lien of the mortgage of August 2, 1918, given to secure the same, and because plaintiff has no adequate relief at law, and is suffering in both credit, reputation, and estate, irremediable and irreparable damage which with each passing day becomes greater in amount and extent, plaintiff respectfully prays:

1. That subpoena, directed to and against United States Shipping Board Emergency Fleet Corporation, a corporation under the laws of the District of Columbia, be issued commanding and requiring said United States Shipping Board Emergency Fleet Corporation, on or before the expiration of the time therein limited to enter its appearance in the above-entitled cause, to answer the exigency of the foregoing bill of complaint or to show cause otherwise why the relief pointed out and prayed for should not be granted.

2. That a rule be issued, requiring said United States Shipping

Board Emergency Fleet Corporation, to show cause on or before day in such rule to be fixed.

(a) why it should not immediately apply so much as may necessary of said award of \$7,194,975 to the satisfaction of the bond and should not simultaneously release to the extent of such application the lien of the blanket mortgage executed and delivered by The Pusey & Jones Company, dated the second day of August, 1918, or/and

(b) why it should not be required to at once join with plaintiff in making sale of either one or both of the shipyards and plants belonging to plaintiff and in said mortgage more particularly described, substituting and holding such cash or securities as may be received in consideration of such sale to abide the final outcome of such accounting as may be requisite and the final determination of the matters sought to be brought in issue in and by this suit.

3. That the defendant, United States Shipping Board Emergency Fleet Corporation, be restrained and permanently enjoined from deducting or threatening or attempt to deduct, from the sum of \$7,194,975, allowed and awarded to plaintiff as just compensation for its work and services rendered in connection with the construction of the ships and vessels referred to in the above bill of complaint, the sum of \$3,776,737, or any other sum whatsoever.

204 4. That said defendant, United States Shipping Board Emergency Fleet Corporation, may be required to apply to the satisfaction of plaintiff's debt evidenced by its said bond for \$8,000,000 and its mortgage given to secure the same all or so much of said sum of \$7,194,975 allowed and awarded to plaintiff as may be required fully to satisfy and discharge the obligation of said bond and justify the release of the mortgage lien, and to pay over unto plaintiff such balance as shall remain, over and above the amount so applied.

5. That said defendant, contemporaneously with such application to and satisfaction of said bond, shall be required to release of record the mortgage dated August 2, 1918, given to secure the same.

6. That defendant, United States Shipping Board Emergency Fleet Corporation, be restrained and enjoined pendente lite from foreclosing or attempting to foreclose the lien of said mortgage dated August 2, 1918, as the same applies to or affects the whole or any part of the properties of this plaintiff in said mortgage described.

7. That plaintiff may have such other and further relief as the circumstances may justify and this honorable court may deem be appropriate and just.

And plaintiff will ever pray, The Pusey & Jones Company, by Chas. Kimmich, Managing Director, McKenney & Flannery Solicitors for Plaintiff.

Charles E. Hughes, Frederic D. McKenney, Charles E. Hughes Jr., John Spalding Flannery, Of Counsel.

205 & 203 DISTRICT OF COLUMBIA, ss:

I, Charles Kimmich, being first duly sworn, say that I am the managing director of The Pusey & Jones Company, a corporation, named as party plaintiff in the foregoing and attached bill of complaint; that as such managing director I have direct and personal knowledge of the business activities of said corporation, and that I am authorized to make oath to said bill of complaint; that I have read the foregoing bill of complaint and the exhibits attached thereto and made a part thereof, and well know the contents of each and every thereof, and the matters and things stated affirmatively and positively in said bill of complaint as of — own knowledge I know to be true, and those stated upon information and belief I believe, and have good reason to believe, to be true. Charles Kimmich.

Subscribed and sworn to before me this 10th day of August, A. D. 1920. Bertha P. Isaacs, Notary, Public, D. C.

207 & 208

EXHIBITS A, B, C, D, AND E.

Referred to in and Made a Part of the Bill of Complaint.

209

EXHIBIT A.

[To Be Read with Par. 10 of Bill.]

This agreement made this 14th day of May, 1918, by and between the Pusey and Jones Company, a corporation of the State of Delaware, party of the first part, hereinafter called "The Company," and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, representing the United States of America, party of the second part, hereinafter called the "Fleet Corporation," witnesseth:

Whereas, The Pusey and Jones Company, the New Jersey Shipbuilding Company and the Pennsylvania Shipbuilding Company, three corporations of the State of Delaware, between August 3, 1917, and January 24, 1918, were engaged in the work of building commandeered ships at their plants at Gloucester, New Jersey, and Wilmington, Delaware, and

Whereas, on or about January 24th, 1918, said three corporations above mentioned by a Certificate of Merger and Consolidation, dated December 21, 1917, did merge and consolidate themselves into a single consolidated corporation to be called and known by the corporate name and title of "The Pusey and Jones Company," the above named party of the first part, hereto, which said consolidated corporation thereby became possessed of all the rights, privileges, powers, franchises, as well of a public as of a private nature, and all property, real, personal and mixed of said three corporations, and did take the same subject to all the restrictions, disabilities and duties of each of the aforesaid corporations as consolidated, and did become liable for all debts due from said corporations on whatever account, and

210 Whereas, The Company is the Owner, in fee simple, free from all liens and encumbrances, except as hereinafter set forth, of two certain tracts of land.

First Tract: Situate in the City of Wilmington, County of New Castle, State of Delaware, and more particularly bounded and described as follows:

Beginning at the intersection of the Southerly side of Front Street at forty-nine feet wide with the Easterly side of Spruce Street at fifty feet wide; thence Westerly along the South side of Front Street eight hundred and ninety-one feet to the right of way of the Pennsylvania Railroad; thence Westerly by a curved line, along the said right of way, and along the Southerly side of Water Street to a point on the said side of Water Street distant two hundred and seventeen feet seven inches West of the Westerly side of Poplar Street at fifty feet wide; thence Southerly and parallel to Poplar Street one hundred and eighty-five feet and five and one-half inches to a point; thence Westerly and parallel to Front Street twenty-five feet and five inches to a point; thence Southerly and parallel to Poplar Street to low water mark of the Christiana River; thence Easterly by the said low water line to a point where the latter line intersects the Easterly side of Spruce Street at fifty feet wide, the distance between the two points on low water line being approximately one thousand three hundred and seventy-nine feet, measured on a line parallel to Front Street; thence Northerly by the Easterly side of Spruce Street three hundred and sixty-five feet, more or less, to the place of beginning.

Second Tract: Situate in the City of Gloucester and Center Township, County of Camden, State of New Jersey, and more particularly described as follows:

211 Beginning in the centre line of Sixth Street, in the City of Gloucester City, and the centre line of a proposed street called Walnut Street, and extending thence Southward along Walnut Street to the middle of Charles Street; thence Easterly along the middle of Charles Street to the Westerly line of Pine Street; thence Southerly along the Westerly line of Pine Street ninety-one feet more or less to the extended Northerly line of lot 28 on Shivers Plan; thence Easterly along the same to the Southwesterly line of Charles Street; thence Easterly along the Southwesterly line of Charles Street to the Westerly line of Grove Street; thence Southerly along the same seventy-four feet to Pine Grove Brewing Co., thence Westerly along same one hundred feet; thence South sixty feet; thence West five feet; thence South two hundred feet to the Southerly line of Ninth Street; thence East along the Southerly line of Ninth Street one hundred and five feet to the West line of Grove Street; thence South along the Westerly line of Grove Street three hundred and sixty feet to the extended Northerly line of lot 138 on Shivers Plan; thence East one hundred and fifty feet; thence Northerly parallel with Grove Street one hundred and twenty feet to land of Joseph Gubbin; thence along the same at right angles East one hundred feet to the Westerly line of Elm Street; thence South along the same two hundred feet to the Northerly line of Tenth Street; thence East fifty feet at right angles to the Easterly line of Elm Street; thence North

along the same two hundred and twenty feet to corner of lands of Joseph Cozzens; thence East along the same at right angles to Elm Street, one hundred and fifty-four feet more or less to the old town line; thence South along the old town line to the Southerly line of Brick Street; thence East along the South line of Brick Street three hundred and fifty-one feet six inches more or less to land
 212 now or late of Gloucester Turnpike Company; thence South along the land now or late of Gloucester Turnpike Company at right angles to Brick Street seventy-seven feet one inch to corner of same; thence East along said land one hundred and seventy-five feet more or less to Westerly line of Broadway; thence South along the Westerly line of Broadway six hundred and seventy-five feet more or less to the centre of Timber Creek; thence Easterly along the centre of Timber Creek to the middle of the bridge across Timber Creek; thence along the middle of the Gloucester Turnpike, being the extension South of Broadway South into Centre Township nine hundred and twenty and sixty-five hundredths feet to the centre of the Railroad; thence along the centre of the Railroad South four hundred and one and nine-tenths feet to the original division line of lands formerly of Joshua P. Browning; thence along said land late of Browning South thirty-five degrees sixteen minutes East eleven hundred and sixty-one and ninety-six hundredths feet to a stone corner now or late of Dempsey; thence by line of the latter and by Daniel Thackara's land South thirty-three degrees thirty minutes West six hundred and five feet to a stone corner in the centre of the public road leading from Woodbury and Gloucester Turnpike to Mt. Ephriam; thence up the centre thereof South eighty-six degrees twenty-two minutes West three hundred and seventy-one and five-tenths feet to a corner; thence crossing said Turnpike North seventy degrees seventeen minutes West seven hundred and thirty-three and four-tenths feet to a stake in a large ditch; thence crossing the afore-said Railroad South forty-seven degrees seventeen minutes West eight hundred and seventy-four and five-tenths feet along the centre of old ditch; to the middle of Great Timber Creek; thence
 213 along the middle of Great or Big Timber Creek North and East according to the courses of said Creek, to its confluence with Little Timber Creek; thence Northeast and Northwest along Great Timber Creek to the Delaware River; thence North along the exterior line of the Delaware River to a line produced from the junction of the Southerly line of Sixth Street, in Gloucester City, at right angles with the exterior wharf line; thence East along said line to the Southerly line of Sixth Street at highwater mark of the River Delaware; thence Easterly along the Southerly line of Sixth Street crossing Water Street to the middle of Walnut Street and place of beginning.

Excepting out of the above described premises the following, Beginning in the Westerly line of Elm Street sixty feet Northward from the Northwest corner of Tenth and Elm Streets; North forty feet by West one hundred feet, being Lots Nos. 130 and 131, Shiver's Plan.

Also excepting the following: Beginning in the East Line of Water Street, in the division line between lots 11 and 12 on Shivers Plan Sixty feet north of the Southerly end of Water Street; thence East between lots 11 and 12, one hundred feet; thence Northward between parallel lines of that width parallel with and along Water Street to Charles Street.

The above description is subject to correction and changes as to causes and distances which are taken here to be more or less.

Whereas, there is now outstanding and unpaid a bond and mortgage heretofore given by the New Jersey Shipbuilding Company to David Baird of the City of Camden, County of Camden, State of

214 New Jersey, to secure the payment of \$150,000, due and payable according to its terms on June 4, 1918, with interest on said amount at the rate of four per cent per annum, payment of which interest has been made up to the fourth day of December, 1917, which said mortgage covers a portion of the real estate at Gloucester, New Jersey, comprising about seven and one-half acres, more or less, and for a more particular description of which reference is made to the mortgage as recorded, and

Whereas, there is outstanding indebtedness of The Company to the Delaware Trust Company in the amount of \$500,000, in the form of promissory notes made by The Pusey and Jones Company before merger and discounted and renewed from time to time, on which notes there is now unpaid the principal sum of \$500,000, which notes have, by resolution of the board of Directors of The Pusey and Jones Company, heretofore been declared to be a first lien on all the assets of that company prior to its merger into The Company, all of which said notes fall due between April 30, 1918, and March 29, 1919, and

Whereas, The Company is also the Owner of certain personal property upon the tracts of land above described, some of which said personal property is used for the purpose of building ships, and for other purposes connected with the business of The Company, and some of which is materials in process of manufacture into machinery for sale by The Company, and

Whereas, it is contemplated in the future, during the life of this agreement, The Company may become the Owner of other personal property hereafter to be acquired to replace or restore personal property of The Company, used up, worn out, destroyed, lost or otherwise disposed of and other personal property to be added to
215 its plants for the purpose of enlarging the productive capacity thereof and new supplies of materials to replace materials used in manufacturing articles for sale, and for other purposes, and

Whereas, since January 24, 1918, The Company has been and now is engaged in the work of building commandeered ships above mentioned at the above named plants, and in the future may be awarded other contracts by the Fleet Corporation for the building of ships for the United States of America, and in order that such work may be expedited, The Company, is desirous of securing a loan from the Fleet Corporation for the purpose of financing the completion of certain improvements in its shipyard at Gloucester, New Jersey, and

Wilmington, Delaware, including the construction of a power plant at Gloucester, New Jersey, which said improvements and estimated cost of the same, based on actual bids secured by The Company and now available, are listed in a Schedule hereto annexed marked Schedule "B," and

Whereas, The Fleet Corporation is willing to make a loan sufficient to enable The Company to finance the improvements not to exceed the sum of Five Million Dollars (\$5,000,000), said loan to be secured by a bond and mortgage of The Company, which is to be a lien on all property, real and personal, now owned by The Company, or hereafter to be acquired during the life of this agreement, payable in the manner and at the time hereinafter specified, as the work of making the said improvements and installation at the said shipyards progresses to the satisfaction of the Fleet Corporation said lien to be subject only to the lien of the Baird mortgage and the Delaware Trust Company loan until the same are fully paid and satisfied.

216 Now, therefore, in consideration of the premises and the mutual covenants and agreements hereinafter set forth and subject to the reservations and conditions hereinafter provided the parties do each agree each with the other as follows:

I.

The Company agree that it will prepare and submit to the Fleet Corporation approved plans and specifications for all work of improvements above mentioned, contemplated at its shipyards and will not proceed with any such work until such plans and proposed expenditures have been first duly approved by the Fleet Corporation or its duly authorized representative. The approval herein provided for is to apply to all work on the contemplated improvements that may have been done prior to the execution of this agreement.

II.

The Fleet Corporation agrees to advance to The Company an amount sufficient to finance the completion of the improvements at its shipyards, according to the plans, specifications and estimates presented to and duly approved by the Fleet Corporation or its representatives; and for working capital said amount of advance not to exceed, in the aggregate, the sum of Five Million Dollars (\$5,000,000). The Fleet Corporation will make said advance by depositing in the name of the Fleet Corporation in the Bank of North America of Philadelphia, Pennsylvania, the bank designated by The Company and approved by the Fleet Corporation as its depository, a sum not exceeding Five Hundred Thousand Dollars (\$500,000) and from time to time upon request of The Company

217 will make such further deposits as may be necessary to keep a deposit in said bank at all times during the life of this agreement or until all of the said sum mentioned above as being sufficient to finance the operation set forth in Schedule "B"

has been advanced, said sums so deposited are to be used only for the purpose of making the actual cash outlay necessary to complete the improvements in the shipyards of The Company, according to plans, estimates and bids submitted to and approved, in advance, by the Fleet Corporation, and The Company agrees to all the work of building and/or installing said improvements and/or to cause the same to be done with the utmost expedition and in good and workmanlike manner subject in every respect to the approval of the Fleet Corporation or its representatives. The deposits to be made by the Fleet Corporation in the bank aforesaid may be drawn upon for the purpose herein specified by the duly authorized Officers of The Company by checks subject to the approval and counter-signature of the duly authorized representative of the Fleet Corporation, and such payments may be made from the deposits as shall enable The Company to meet all its obligations intended to be covered hereby, with promptness to avail itself of any discounts and to carry on the entire operation in an efficient and expeditious manner.

The Company will present to the duly authorized representative of the Fleet Corporation proper vouchers for all payments of bills proposed to be made in connection with all the work of plant extension herein contemplated, or bills of lading or properly audited bills showing indebtedness incurred by reason of work done or material purchased for plant extension and improvement. To facilitate payments, representatives of the Fleet Corporation will be instructed to authorize the necessary payments within the usual prerequisite of evidence of proper distribution but The Company agrees that upon request of the duly authorized representative of the Fleet Corporation the proper Officers of The Company will present in form approved by the duly authorized representatives of the Fleet Corporation all necessary and proper details as to distribution of advance payments, and in the event of the failure of The Company to comply with such request at once, then the Fleet Corporation will withhold from future payment sums equivalent to the sums not accounted for in accordance with the request aforesaid.

Any interest paid by the depository bank on such deposits is the property of the Fleet Corporation and upon the final completion, forfeiture or cancellation of this contract, the balance of the fund and interest thereon may be withdrawn by the Fleet Corporation without the signature of The Company.

III.

The Fleet Corporation shall have the right to inspect all work to be done and to examine and audit the books and accounts of The Company wherever the same may be or if request is made by the Fleet Corporation or its representatives The Company agrees to furnish the Fleet Corporation a proper audit of its accounts and books and all expenditures made by it. The auditors for such work are to be selected by the Fleet Corporation and the cost of such audit is to be borne by The Company.

IV.

The Company agrees to execute and deliver to the Fleet Corporation upon the execution of this agreement its bond, in a form satisfactory to the counsel of the Fleet Corporation, and in an amount sufficient to secure the advance herein provided for, and by 219 said bond The Company shall obligate itself to repay all sums advanced to it as follows:

a. By the Fleet Corporation withholding from the prices heretofore determined upon between The Company and the Fleet Corporation as just compensation for completing each ship under construction by The Company on March 8th, 1918: All of the amount being the difference between the sum determined upon as just compensation or agreed price for the vessels respectively, and the cost of said vessels respectively, as approved by the Auditors of the Fleet Corporation: it being understood, however, and agreed, that all expenditures other than direct material and labor for vessels and plant shall be classified as overhead and distributed pro rata over cost of vessels and cost of plant respectively, based on the direct labor expended on vessels and plant respectively.

b. By the payment of the balance of said advance remaining unpaid after the application of the amounts withheld and credited by the Fleet Corporation in accordance with the provisions of paragraph (a) above in four equal annual installments, the first installment to be paid on the 1st day of May, 1920, one installment to be paid annually thereafter until the 1st day of May, 1923, when the last installment shall become due and payable.

c. Should the Fleet Corporation award any contracts in the future to The Company for the building of ships or the construction or manufacture of any other article at prices hereafter to be agreed upon, then, and in that event, the Fleet Corporation is to withhold from these agreed prices all of the amount being the difference between the agreed price for the construction of vessels or the construction or manufacture of other articles respectively and the cost of said vessels or other articles respectively, as approved by the 220 Auditors of the Fleet Corporation: it being understood, however, and agreed that as to these contracts for additional ships, or contracts for the construction or manufacture of any other article, the distribution of the overhead in respect thereof shall be pro-rated on the basis of direct labor, as applied to each.

It is understood and agreed, however, that the Fleet Corporation is in no way obligated by any of the terms of this Agreement to give to The Company any contracts in the future for the building of vessels or the construction or manufacture of other articles, but in the event that it does not it will permit The Company to make full use of its plant in other manufacturing operations.

Said sum or sums so withheld, if any, are to be credited as payment on the installments provided for in paragraph (b) above. Should the amounts so withheld and credited on the installments be more than sufficient to pay one or more of said installment payments above provided for, then, and in that event, the remaining install-

ment payments or any part of an installment left unpaid after crediting the sum or sums withheld, as provided for in this paragraph, shall fall due at the time or times specified in paragraph (b) above.

d. By the payments to the Fleet Corporation of the proceeds of sale of the paper machines in course of construction at the Wilmington plant of The Company less the cost of the completing and sale of the same, said payment to be made upon the delivery of said paper machines to the purchaser or purchasers and the proceeds of sale or sales to be credited against the amount of the principal and interest of the bond in the manner outlined in paragraph (c) above and as said machines are sold, release or releases of each from the lien of the mortgage to be executed and delivered by the Fleet Corporation simultaneously with the payment of the sales price to the Fleet Corporation or other adequate provision made, in such manner as will permit the sale of the same, discharged from the mortgage lien.

V.

Interest to be charged from October 1, 1919, upon the amount of the advances secured by the mortgage remaining unpaid on that date, at the rate of five per cent per annum, payable semi-annually.

VI.

The Company agrees to deliver simultaneously with the delivery of its bond a blanket mortgage in form approved by counsel of the Fleet Corporation for record in the States of New Jersey and Delaware, covering the aforesaid described real estate and personal property, and all improvements made or to be made thereon, including all franchises, licenses, State, County, Municipal and other rights, together with all personal property hereafter acquired by The Company, which may be used up, worn out, destroyed, lost or in any other manner disposed of and removed from the premises of The Company and all other real and personal property hereafter added to the plant for any purpose whatever. Said mortgage shall contain provisions similar to those contained in the bond, and shall be subject in its entirety to the approval of counsel of the Fleet Corporation.

VII.

The Company agrees to attend carefully and promptly to the payment of the following specified charges whenever the same become due or necessary.

(a) To the payment of taxes and assessments levied and assessed or to be levied and assessed upon the property to be covered by the aforesaid mortgage.

(b) To the payment of premiums for insurance on property to be covered by said blanket mortgage.

(c) To the payment of such items of ordinary and usual repair to its plant and equipment as shall be necessary to keep the same in

good repair and sufficient security for the advances herein provided to be made by the Fleet Corporation.

The Company agrees that the sums to be withheld by the Fleet Corporation in the provisions of paragraph (a), (c) and (d) of Section IV of this agreement and the installments in paragraph (b) of said Section shall be applied to the payment of the obligation of The Company, incurred hereby, as follows:

(a) To the payment of interest or arrearages of interest on the aforesaid bond and blanket mortgage, it being understood that in the event of there being such arrearages of interest any payment made The Company, shall be first applied to the satisfaction of such arrearage or arrearages.

(b) To the payment of installments of principal or arrearage of principal remaining due on said bond and blanket mortgage in accordance with the terms thereof; any payments made to be applied first to the satisfaction of arrearage or arrearages of principal.

VIII.

The Company agrees during the life of this agreement and until the full satisfaction of the bond and mortgage provided herein that no dividends shall be declared or paid to its stockholders either preferred or common, and no redemption of preferred stock as provided in its Certificate of Merger shall be permitted or made. It is hereby agreed that the Fleet Corporation shall have representation 223 on the Board of directors of The Company by one of the representatives of the Fleet Corporation duly designated for that purpose to whom shall be assigned shares of common stock and preferred stock of The Company in voting form and in an amount satisfactory to the Fleet Corporation, the same to be re-assigned by the Fleet Corporation upon the full payment of principal and interest of the advance.

The Company further agrees to amend its by-laws so that the directors may take all necessary steps to elect Henry G. Barstar as Treasurer of The Company, and to make provision that the said office of Treasurer may be filled from time to time by a nominee of the Fleet Corporation and to provide by said changes in the by-laws that the Treasurer so named by the Fleet Corporation shall have complete control of the disbursements of the corporate funds at all three yards of The Company.

IX.

The Company agrees that the Fleet Corporation may secure from a responsible title company, authorized by law to examine and insure titles in the state or states wherein the above real estate is situate, said company to be selected by and satisfactory to the Fleet Corporation, a title policy or policies guaranteeing the title of the real estate above described to be issued in an amount satisfactory to the Fleet Corporation, which said title policy or title policies shall be assigned to, delivered to and held by the Fleet Corporation during the life of this agreement, and until the bond and mortgage herein provided for are

fully paid and satisfied. The cost of said title policy, survey of real estate and all legal expenses connected therewith including recording fees, revenue stamps, etc., shall be borne by the Company.

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X.

The Company will keep all its real and personal property described in the mortgage aforesaid free and clear from all claims, liens or encumbrances of any kind or description, exception the two liens herein above specifically set forth and assented to by the Fleet Corporation, and shall at any time during the life of this agreement, upon the request of the Fleet Corporation produce proof to the satisfaction of the Fleet Corporation that the property aforesaid is free and clear from any claims, liens or encumbrances except as aforesaid, or will bond the same.

XI.

The Company agrees that it will to the extent that funds are made available to it by the Fleet Corporation promptly pay for all labor, materials and for services rendered to it in connection with the work of the contemplated improvements to its shipbuilding plants; secure releases covering mechanic's liens and proper receipts and exhibit same to the Fleet Corporation and/or its duly authorized representatives upon request.

XII.

The Company agrees to procure, so far as procurable, and thereafter maintain insurance on its property, real and personal to be covered by the blanket mortgage herein provided for, in such form, amount, company or companies and for such periods, as the Fleet Corporation shall approve. The policy or policies of insurance thus procured shall provide that the loss, if any, shall be payable to The Company for the use of The Company and for the Fleet Corporation as their respective interests may appear.

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XIII.

The Company in performing the work of the contemplated improvements or in having the said work done shall insist, and see to it, that the work is done in first-class manner, and said work, including installation of all equipment, the building or extensions and everything else connected therewith, shall at all times be subject to the inspection and approval of the Fleet Corporation or its duly authorized representative and the inspectors of the Fleet Corporation may direct the re-placement of any unfit workmanship or materials at any time during the progress of the work or within a reasonable time after the completion thereof.

XIV.

The Company will establish and keep separate suitable accounts and records, showing the actual cost of the contemplated improve-

ments. The preservation of said accounts and records for a reasonable time shall be provided by agreement of the parties hereto. Said accounts and records shall at all reasonable times be open to the inspection of the Fleet Corporation. All statements and account relating to expenditures and costs shall be made by The Company in such form and supported by vouchers and such other original papers as may be required by the duly authorized officers of the Fleet Corporation. The Fleet Corporation may send auditors to the shipyards and offices of The Company to supervise and oversee in the accounting relating to the completion of the improvements.

XV.

This agreement shall not be transferred by The Company to any person or persons, firm, partnership, or corporation without the consent of the Fleet Corporation in writing first had and obtained.

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XVI.

All notices in writing required by this Agreement from The Company to the Fleet Corporation shall be sent by registered mail or by prepaid telegram, confirmed by mail, addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or any other main office that may be hereafter established, or be delivered personally to an executive officer or the District Officer of the Fleet Corporation.

All notices in writing from the Fleet Corporation to The Company shall be sent by registered mail or by prepaid telegram, confirmed by mail, addressed to The Pusey & Jones Company, Corner of Front and Poplar Streets, Wilmington, Delaware, or to be delivered personally to an executive officer of The Company.

XVIII.

The Company in all its acts hereunder shall use its best efforts to protect and subserve the interests of the Fleet Corporation. The Company will procure all necessary permits and licenses in connection with the work of the contemplated improvements and obey and abide by all laws, regulations, ordinances and other rules applying to such work of the United States of America or the State or territory wherein such work is being done or any subdivision thereof or any duly constituted public authority.

XVIII.

The Company will in the performance of its agreements hereunder for plant extension comply with and be bound by all the directions, instructions and decisions of the Fleet Corporation or its authorized representatives and compliance by The Company with such directions, instructions, or decisions shall be a justification to The Company on any action so taken.

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XIX.

The Company agrees to furnish to the Fleet Corporation full information as to the personal property owned by The Company so that a definite list and inventory of the same may be made up and attached to the blanket mortgage herein above mentioned.

XX.

The Company further agrees that during the life of this Agreement and during the performance of the work of any future contracts awarded to it by the Fleet Corporation, it will not employ its ship-building plants or resources for any other purpose than the complete and expeditious fulfillment of its engagements with the Fleet Corporation without the consent of the Fleet Corporation.

XXI.

The Company agrees that no part of the advances provided for in the Agreement shall be used in the payment of salaries to the officers greater than the following schedule:

Name.	Salary.	Office.
Christoffer Hannevig...	\$25,000	President.
Finn Hannevig	15,000	Vice-President.
C. Frølich Hanssen	18,000	Managing Director.
Henry Lysholm	20,000	Vice-President.
Ralph James M. Bullowa	12,000	Secretary and General Counsel.
Henry G. Barstar	7,500	Treasurer.
George S. Hoell	5,000	Office Manager and Assistant Treasurer, Gloucester.
Matthew E. Davis	7,200	General Superintendent, New Jersey Yard.
C. Stuart Lee	7,200	Assistant Manager, Wilmington Yard.
C. B. Lynch	5,000	Assistant Treasurer, Wilmington Yard.
Nisse Karfve	6,000	Marine Manager, Wilmington Yard.
H. B. Ramsey	7,200	General Superintendent, Pennsylvania Yard.
Lee S. Harris	3,000	Construction engineer at three yards.

228 Salaries of officers of allied or subsidiary companies are not to be allowed as a charge against advances herein provided for or paid therefrom.

The appointment and compensation of any additional officers for The Company must first have the approval of the Fleet Corporation.

XXII.

The Company agrees that no part of the fund to be advanced by the Fleet Corporation in accordance with this agreement shall be used in the repayment of any loans heretofore made to The Pusey & Jones Company, the New Jersey Shipbuilding Company and the Pennsylvania Shipbuilding Company, the merged corporations, or to The Company since its consolidation by Mr. Christoffer Hannevig, Christoffer Hannevig, Inc., Bulk Oil Transports, Inc., Mauss Steamship Corporation or any other company individual or partnership associated with them until the entire amount of principal of the Fleet Corporation's advance, together with the interest thereon, has been paid. Said loans aggregate about \$2,000,000, all of which, excepting in lieu the form of notes amounting to \$650,000, advanced by Mr. Christoffer Hannevig of Christoffer Hannevig, Inc., to The Pusey & Jones Company, Wilmington, Delaware, between July 27, 1917 and October 1, 1917, are to be converted into preferred stock at par of The Company. The payment of said indebtedness of \$650,000 is to be deferred until the entire amount of the mortgage loan of the Fleet Corporation, together with interest thereon, has been paid. All payments on work included in the estimate set forth in Schedule "B," hereto annexed, made by The Company from the moneys realized from the loans above mentioned shall be credited against the total amount of the mortgage loan 229 here-in provided, and said total amount of the mortgage loan shall be proportionately decreased. Said preferred stock so issued is to be held by Christoffer Hannevig, personally, and no redemption of or payment of dividends on the same by The Company shall be permitted or made without the consent of the duly authorized representative of the Fleet Corporation first had and obtained. The Company further agrees that wherever necessary proper corporate action by each creditor company above named authorizing the issuance of preferred stock to Christoffer Hannevig in settlement of the obligations of The Company to said creditor shall be taken and proper evidence of such corporate action presented to the Fleet Corporation simultaneously with the execution of this Agreement.

XXIIa.

In order that The Company may not be hampered in its work of building ships, or its work of manufacturing or constructing other articles when approved by the Fleet Corporation, it is further understood and agreed that the Fleet Corporation will make the necessary arrangements to provide necessary working capital for payroll and such other expenses as may be requested by Company's Treasurer and approved by the Corporation. To facilitate these payments representatives of the Fleet Corporation will be instructed to authorize the same on estimated amounts made up by the Treasurer of The Company.

XXIII.

The Company further agrees to deliver simultaneously herewith an agreement signed by Christoffer Hannevig, Christoffer Hannevig, Inc., Bulk Oil Transports, Inc., Manass Steamship Corporation and all other associated Hannevig interests deferring their and
230 each of their claims against The Company until the advances made by the Fleet Corporation under this agreement are fully re-paid, or accepting preferred stock of The Company at par in payment of said claims.

XXIV.

The Company agrees that the Fleet Corporation through its duly authorized representatives shall have the right at all times to inspect and supervise the work of shipbuilding at the plants of The Company; to make suggestions as to necessary changes in the management of the plant, the personnel of the same and the improvements in the method and manner of building the ships now or in the future under construction at the shipyard of The Company and shall report the same to Mr. Coonley of the Fleet Corporation who shall give The Company a hearing and his decision, after such hearing, shall be binding upon The Company.

XXV.

The District Auditor shall have the right to investigate and audit all charges to Plant Extension made by The Company from time to time as the work of completing the plant improvements progresses and all charges shall be subject to the approval of the District Auditor after auditing the distribution thereof; it being understood and agreed that indirect expenses and proper charges to overhead expenses in the matter of plant extension shall be distributed over the plant extension operations on a basis of direct labor thereto. It being the intent thereby to forbid the charging of items or any part thereof of overhead expenses and indirect expenses in connection with plant extension, to overhead and indirect expense of ship construction. The Company agrees to render every assistance possible to the District Auditor in his investigation and audit of all such charges.

XXVI.

The Company will endeavor to secure an extension of the Baird mortgage and the time of payment of the amount due the Delaware Trust Company on notes; in the event that The Company cannot secure either or both of said extensions the Fleet Corporation will pay out of the advances either or both of said sums upon their respective due dates and the amount so paid shall be added to the principal of the loan made herein, and be secured by the bond and mortgage herein provided for.

Similar disposition will be made of the loan of \$100,000 on promissory note of the Company discounted at the Franklin National Bank of Philadelphia, falling due May 20, 1918, and the loan of \$45,000 on promissory note of The Company discounted at the First National Bank of Camden, N. J., which fell due on May 12, 1918.

XXVII.

The loan made by the Equitable Trust Company of New York of \$300,000 to The Company will be paid by the Fleet Corporation at its due date, for such an amount as was expended from said loan, for plant extension, stock operating expenditures in either of the three yards of The Pusey & Jones Company, and the amount so paid shall be added to the principal of the loan made herein and be secured by the bond and mortgage herein provided for.

XXVIII.

No brokerage or commission of any kind in connection with any business of The Company shall be charged against or paid out of the advances made under this agreement except selling commission not to exceed 6% on the sales price, on the paper making machinery.

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XXIX.

Upon the request of The Company the Fleet Corporation will release from the lien of the mortgage such real estate as the Fleet Corporation may approve for the purpose of providing houses for shipyard workers.

XXX.

Upon payment of mortgage the Fleet Corporation shall execute releases thereof and The Company shall have the right upon thirty days' notice to repay the amount of advance of the Fleet Corporation and secure the release of the bond and mortgage.

XXXI.

This agreement is taken by the parties hereto as embodying their entire understanding and shall not be altered, except by a modification first reduced to writing and consented to by the parties hereto.

In Witness Whereof, the parties hereto have caused these presents to be executed in triplicate by the proper corporate officers, and their corporate seals to be hereto affixed, attested and attached on the day above stated. [Seal.] United States Shipping Board Emergency Fleet Corporation. By Howard Coonley, Vice-President.

Attest: Stephen Bourne, Secretary.

[Seal.] Pusey and Jones Company. By Christoffer Hannevig, President.

Attest: Ralph James M. Bullowa, Secretary.

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SCHEDULE "B."

The Pusey & Jones Company, Gloucester City, N. J.

Grand Summary Covering General Pennsylvania, New Jersey and Middle Yards.

	Original estimate.	Revision and additions.	Grand total.
General	535,220	714,201	1,249,421
Pennsylvania Yard	442,435	431,236	873,671
New Jersey Yard.....	812,200	484,291	1,296,491
Middle Yard	501,754	134,563	636,317
Wilmington	300,145	136,750	436,895
	<hr/> 2,591,754	<hr/> 1,901,041	<hr/> 4,492,795

STATE OF NEW YORK,

County of New York, ss:

Be it remembered, That on this 18th day of June in the year of our Lord one thousand nine hundred and eighteen, personally came before me, Cyril R. Taylor, a Notary Public for the State of New York, Christoffer Hannevig, President of the Pusey and Jones Company, corporation aforesaid, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be his act and deed and the act and deed of said The Pusey and Jones Company, corporation as aforesaid, and his signature thereto as President to be in his own proper handwriting and the seal [28a] thereunto affixed to be the common and corporate seal of said corporation and that said execution, the acknowledgment and delivery of this Indenture were duly authorized by resolution of the directors of said corporation.

Given under my hand and seal of office the day and year aforesaid. [Seal.] Cyril R. Taylor, Notary Public, Kings Co.

Certificate N. Y. County, No. 151.

234 STATE OF NEW YORK,

County of New York, ss:

Be it known, That on this 18th day of June, in the year one thousand nine hundred and eighteen, before me, a Notary Public of the State of New York, County of New York, personally appeared Ralph James M. Bullowa, of full age, who being by me duly sworn, on his oath says that he is the Secretary of The Pusey and Jones Company, which is the company mentioned in, and who executed, the foregoing agreement; that the said company is a corporation; that he knows the seal of the said corporation; that the seal affixed to this agreement is the common seal of the said corporation; that Christoffer Hannevig is the President of the said corporation, and did, by its order, sign, seal and deliver the said agreement as

its voluntary act and deed in the presence of said deponent, and that he, the said deponent, did, at the execution thereof, subscribe his name as a witness thereto. Ralph James M. Bullowa.

In witness whereof I have hereunto set my hand and affixed my official seal, at New York, in the County and State aforesaid, the day and year last above written. [Seal.] Cyril R. Taylor, Notary Public, Kings Co.

Certificate filed N. Y. County, No. 151.

EXHIBIT B.

(To Be Read with Par. 11 of Bill.)

Know all men by these presents, that The Pusey and Jones Company, a corporation organized and existing under the laws of the State of Delaware, hereinafter called the obligor, is held and
235 firmly bound unto the United States Shipping Board Emergency Fleet Corporation, a corporation organized and existing under the laws of the District of Columbia, hereinafter called the obligee, in the sum of Five Million Dollars (\$5,000,000), lawful money of the United States of America, to be paid to the said United States Shipping Board Emergency Fleet Corporation, its successors or assigns for which payment well and truly to be made, the obligor doth bind itself, its successors and assigns, firmly by these presents. Sealed with its seal. Dated the second day of August, One Thousand Nine Hundred and Eighteen.

Whereas, The Pusey and Jones Company, the New Jersey Shipbuilding Company and the Pennsylvania Shipbuilding Company, three corporations of the State of Delaware, between August 3, 1917, and January 21, 1918, were engaged in the work of building commandeered ships at their plants at Gloucester, New Jersey, and Wilmington, Delaware, and

Whereas, on or about January 24th, 1918, said three corporations above mentioned by a Certificate of Merger and Consolidation, dated December 21, 1917, did merge and consolidate themselves into a single consolidated corporation to be called and known by the corporate name and title of "The Pusey and Jones Company," the above obligor, which said consolidated corporation thereby became possessed of all the rights, privileges, powers, franchises, as well of a public as of a private nature, and all property, real, personal and mixed of said three corporations, and did take the same, subject to all the restrictions, disabilities and duties of each of the aforesaid corporations as consolidated and did become liable for all debts due
from said corporations on whatever account, and

236 Whereas, since January 24, 1918, the obligor has been and now is engaged in the work of building commandeered ships above mentioned at the above named plants, and in the future may be awarded other contracts by the obligee for the building of ships for the United States of America, and in order that such work may be expedited the obligor is desirous of securing a loan from the obligee for the purpose of financing the completion of certain im-

improvements in its shipyards at Gloucester, New Jersey, and Wilmington, Delaware, including the construction of a power plant at Gloucester, New Jersey, which said improvements and estimated cost of the same, based on actual bids secured by the obligor and now available, have been listed in a schedule and submitted heretofore, and

Whereas, the obligee is willing to make the loan sufficient to enable the obligor to have working capital and to finance the improvements not to exceed the sum of Five Million Dollars, which said loan is intended to be secured by this bond together with a mortgage of the obligor covering all its property, real and personal, now owned or hereafter to be acquired, payable in the manner and at the times hereinafter specified as the work of making the said improvements and installations at the said shipyards progresses to the satisfaction of the obligee, and

Whereas, the obligor and the obligee did enter into an agreement on the 14th day of May, Nineteen Hundred and Eighteen, which is incorporated herein and made a part hereof by the reference to it as fully as if herein set forth at length, which did provide among other things the following:

"The Fleet Corporation agrees to advance to The Company an amount sufficient to finance the completion of the improvements at its shipyards, according to the plans, specifications and estimates presented to and duly approved by the Fleet Corporation or its representatives and for working capital, said amount of advance not to exceed, in the aggregate, the sum of Five Million Dollars (\$5,000,000). The Fleet Corporation will make said advance by depositing in the name of the Fleet Corporation in the Bank of North America of Philadelphia, Pennsylvania, the bank designated by The Company and approved by the Fleet Corporation as its depository, a sum not exceeding Five Hundred Thousand Dollars (\$500,000) and from time to time upon request of The Company will make such further deposits as may be necessary to keep a deposit in said bank at all times during the life of this agreement or until all of the said sum mentioned above as being sufficient to finance the operations set forth in Schedule "B" has been advanced, said sums so deposited are to be used for the purpose of making the actual cash outlay necessary to complete the improvements in the shipyards of The Company, according to plans, estimates and bids submitted to and approved, in advance, by the Fleet Corporation, and The Company agrees to do all the work of building and/or installing said improvements and/or to cause the same to be done with the utmost expedition and in good and workmanlike manner subject in every respect to the approval of the Fleet Corporation or its representatives. The deposits to be made by the Fleet Corporation in the bank aforesaid may be drawn upon for the purposes herein specified by the duly authorized Officers of The Company by checks subject to the approval and counter signature of the duly authorized representative of the Fleet Corporation, and such payments may be made from the deposits as shall enable The

238 Company to meet all its obligations intended to be covered hereby, with promptness to avail itself of any discounts and to carry on the entire operation in an efficient and expeditious manner.

The Company agrees to execute and deliver to the Fleet Corporation upon the execution of this agreement, its bond, in a form satisfactory to the counsel of the Fleet Corporation, and in an amount sufficient to secure the advance herein provided for, and by said bond The Company shall obligate itself to re-pay all sums advanced to it as follows:

a. By the Fleet Corporation withholding from the prices heretofore determined upon between The Company and the Fleet Corporation as just compensation for completing each ship under construction by The Company on March 8th, 1918: All of the amount being the difference between the sum determined upon as just compensation or agreed price for the vessels respectively, and the cost of said vessels respectively, as approved by the Auditors of the Fleet Corporation; it being understood however, and agreed, that all expenditures other than direct material and labor for vessels and plant shall be classified as overhead and distributed pro rata over cost of vessels and cost of plant respectively, based on the direct labor expended on vessels and plant respectively.

b. By the payment of the balance of said advance remaining unpaid after the application of the amounts withheld and credited by the Fleet Corporation in accordance with the provisions of paragraph (a) above in four equal annual installments, the first installment to be paid on the 1st day of May, 1920, one installment to be paid annually thereafter until the 1st day of May, 1923, when the last installment shall become due and payable.

239 c. Should the Fleet Corporation award any contracts in the future to The Company for the building of ships or the construction or manufacture of any other article at prices hereafter to be agreed upon, then, and in that event, the Fleet Corporation is to withhold from these agreed prices all of the amount being the difference between the agreed price for the construction of vessels or the construction or manufacture of other articles respectively and the cost of said vessels or other articles respectively, as approved by the Auditors of the Fleet Corporation; it being understood, however, and agreed that as to these contracts for additional ships, or contracts for the construction or manufacture of any other article, the distribution of the overhead in respect thereof shall be prorated on the basis of direct labor, as applied to each.

It is understood and agreed, however, that the Fleet Corporation is in no way obligated by any of the terms of this Agreement to give to The Company any contracts in the future for the building of vessels or the construction or manufacture of other articles, but in the event that it does not it will permit The Company to make full use of its plant in other manufacturing operation.

Said sum or sums so withheld, if any, are to be credited as payments on the installments provided for in paragraph (b) above. Should the amount so withheld and credited on the installment pay-

ments be more than sufficient to pay one or more of said installment payments above provided for, then, and in that event, the remaining installment payments or any part of an installment left unpaid after crediting the sum or sums withheld, as provided for in this paragraph, shall fall due at the time or times specified in paragraph (b) above.

d. By the payment to the Fleet Corporation of the proceeds of sale of the paper machines in course of construction at the Wilmington plant of The Company less the cost of the completion
210 and sale of the same, said payment to be made upon the delivery of said paper machines to the purchaser or purchasers and the proceeds of sale or sales to be credited against the amount of the principal and interest of the bond in the manner outlined in paragraph (c) above, and as said machines are sold, release or releases of each from the lien of the mortgage to be executed and delivered by the Fleet Corporation simultaneously with the payment of the sales price to the Fleet Corporation or other adequate provision made, in such manner as will permit the sale of the same, discharged from the mortgage lien.

Interest to be charged from October 1, 1919, upon the amount of the advances secured by the mortgage remaining unpaid on that date, at the rate of five per cent per annum, payable semi-annually."

The condition of the above obligation is such that if the above bounden The Pusey and Jones Company, the obligor above named, its successors or assigns, shall well and truly pay or cause to be paid unto the above named United States Shipping Board Emergency Fleet Corporation, the obligee, its successors or assigns, the just and full sum of Five Million Dollars (\$5,000,000) in the following manner, that is to say:

a. By the obligee withholding from the prices heretofore determined upon between the obligor and the obligee as just compensation for completing each ship under construction by the obligor on March 8th, 1918: All of the amount being the difference between the sum determined upon as just compensation or agreed price for the vessels respectively, and the cost of said vessels respectively, as approved by the Auditors of the obligee; it being understood, however, and agreed, that all expenditures other than direct material and labor for vessels and plant shall be classified as overhead and
211 distributed pro rata over cost of vessels and cost of plant respectively, based on the direct labor expended on vessels and plant respectively.

b. By the payment of the balance of said advance remaining unpaid after the application of the amounts withheld and credited by the obligee in accordance with the provisions of paragraph (a) above in four equal annual installments, the first installment to be paid on the 1st day of May, 1920, one installment to be paid annually thereafter until the 1st day of May, 1923, when the last installment shall become due and payable.

c. Should the obligee award any contracts in the future to the obligor for the building of ships or the construction or manufacture

of any other article at prices hereafter to be agreed upon, then, and in that event, the obligee is to withhold from these agreed prices all of the amount being the difference between the agreed price for the construction of vessels or the construction or manufacture of other articles respectively and the cost of said vessels or other articles respectively, as approved by the Auditors of the obligee; it being understood, however, and agreed that to these contracts for additional ships, or contracts for the construction or manufacture of any other article, the distribution of the overhead in respect thereof shall be prorated on the basis of direct labor, as applied to each. Said sum or sums so withheld, if any, are to be credited as payments on the installments provided for in paragraph (b) above. Should the amount so withheld and credited on the installments be more than sufficient to pay one or more of said installment payments above provided for, then, and in that event, the remaining installment payments or any part of an installment left unpaid, after crediting the sum or sums withheld as provided for in this paragraph, shall fall due at the time or times specified in paragraph (b) above.

212 *d.* By the payment to the obligee of the proceeds of sale of the paper machines in course of construction at the Wilmington Plant of the obligor less the cost of the completion and sale of the same, said payment to be made upon the delivery of said paper machines to the purchaser or purchasers, and the proceeds of sale or sales to be credited against the amount of the principal and interest of the bond in the manner outlined in paragraph (c) above.

And the interest to be computed from October 1st, 1919, upon the amount of the advances above mentioned remaining unpaid on that date at and after the rate of five per cent per annum and to be paid semi-annually on the 1st day of April and the 1st day of October in each year thereafter until the full repayment of the principal and interest of this bond without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

And it is hereby expressly agreed, that should any default be made in the payment of the said interest or installment or installments of principal or any part thereof on any day whereon the same is or are made payable as above expressed or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond and become due and payable and should the said interest or installment or installments of principal remain unpaid and in arrear for the space of sixty days or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien or any or either of them remain unpaid and in arrear for the space of ninety days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be,

213 and, or should the obligor fail to keep and perform each and every covenant and agreement on its part to be kept and performed in said agreement of May 14th, 1918, and continue in default for a period of sixty days after notice thereof from

the obligee in writing, the aforesaid principal sum of Five Million Dollars (\$5,000,000) or any balance thereof remaining due and unpaid at that time with all interest thereon shall at the option of the said obligee or its legal representatives become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

No right of action shall accrue upon or by reason thereof to or for the use or benefit of anyone other than the obligee, its successors or assigns.

Each and every default on the part of the obligor in the performance of all the aforesaid conditions of the bond, shall at the option of the obligee give rise to an immediate cause of action, which shall at the option of the obligee be separate and distinct from any cause or causes of action arising from the defaults thereafter occurring; the bringing of suit upon one such cause of action shall not prejudice or bar the bringing of separate suits upon other causes of action, whether theretofore or thereafter arising. [Seal The P. & J. Co.] The Pusey and Jones Company, by Christoffer Hannevig, President.

Signed, sealed and delivered in the presence of: David Armstrong.
Attest: Ralph James M. Bullowa, Secretary.

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EXHIBIT C.

(To Be Read with Par. 11 of Bill.)

This Indenture made the second day of August in the year of our Lord one thousand nine hundred and eighteen Between The Pusey and Jones Company a corporation organized and existing under the laws of the State of Delaware hereinafter called the mortgagor and United States Shipping Board Emergency Fleet corporation a corporation organized and existing under the laws of the District of Columbia hereinafter called the Mortgagee Whereas The Pusey and Jones Company the New Jersey Shipbuilding Company and the Pennsylvania Shipbuilding Company three corporations of the State of Delaware between August 3 1917 and January 24 1918 were engaged in the work of building commandeered ships at their plants at Gloucester New Jersey and Wilmington Delaware and Whereas on or about January 24th 1918 said three corporations above-mentioned by a Certificate of Merger and Consolidation dated December 21, 1917 did merge and consolidate themselves into a single consolidated corporation to be called and known by the corporate name and title of The Pusey and Jones Company the above named party of the first part hereto which said consolidated corporation thereby became possessed of all the rights privileges powers franchises as well of a public as of a private nature and all property real personal and mixed of said three corporations and did take the same subject to all the restrictions disabilities and duties of each of the aforesaid corporations as consolidated and did become

liable for all debts due from said corporations on whatever account and Whereas the mortgagor is the owner in fee simple free from all liens and encumbrances except as hereinafter set forth of certain tracts of land more particularly hereinafter described and Whereas there is now outstanding and unpaid a bond and mortgage
245 heretofore given by the New Jersey Shipbuilding Company to David Baird of the City of Camden County of Camden State of New Jersey to secure the payment of \$150,000, due and payable according to its terms on June 4 1918 with interest on said amount at the rate of four per cent per annum payment of which interest has been made up to the fourth day of December 1917 which said mortgage covers a portion of the real estate at Gloucester New Jersey comprising about seven and one-half acres more or less and for a more particular description of which reference is made to the mortgage as recorded and Whereas there is an outstanding indebtedness of the Mortgagor to the Delaware Trust Company in the amount of \$500,000 in the form of promissory notes made by the Pusey and Jones Company before merger and discounted and renewed from time to time on which notes there is now unpaid the principal sum of \$500,000 which notes have by resolution of the Board of Directors of The Pusey and Jones Company heretofore been declared to be a first lien on all the assets of that company prior to its merger into The Company all of which said notes fell due between April 30 1918 and March 29 1919 and Whereas the mortgagor is also the owner of certain personal property upon the tracts of land above described some of which said personal property is used for other purposes connected with the business of the mortgagor and some of which is materials in process of manufacture into machinery for sale by the mortgagor and Whereas it is contemplated in the future during the life of this agreement that the mortgagor may become the owner of other personal property hereafter to be acquired to replace or restore personal property of the mortgagor used up worn out destroyed lost or otherwise disposed of and other personal property to be added to its plants for the purpose of enlarging the productive capacity thereof and new supplies of materials to
246 replace materials used in manufacturing articles for sale and for other purposes and Whereas since January 24 1918 the mortgagor has been and now is engaged in the work of building commandered ships above mentioned at the above named plants and in the future may be awarded other contracts by the mortgagee for the building of ships for the United States of America and in order that such work may be expedited the mortgagor is desirous of securing a loan from the mortgagee for the purpose of financing the completion of certain improvements in its shipyards at Gloucester New Jersey and Wilmington Delaware including the construction of a power plant at Gloucester New Jersey which said improvements and estimated cost of the same based on actual bids as far as possible secured by the mortgagor and now available are listed in a schedule annexed to the agreement between the parties hereto dated May 14 1918 marked Schedule "A" and also for the purpose of securing

working capital and Whereas the mortgagee is willing to make a loan sufficient to enable the mortgagor to have working capital and to finance the improvements not to exceed the sum of Five Million Dollars (\$5,000,000) said loan to be a lien on all property real and personal now owned by the mortgagor or hereafter to be acquired during the life of this Agreement payable in the manner and at the times hereinafter specified as the work of making the said improvements and installations at the said shipyards progresses to the satisfaction of the mortgagee said lien to be subject only to the lien of the Baird Mortgage and the Delaware Trust Company loan until the same are fully paid and satisfied and Whereas for the purpose of securing the payment to the mortgagee of the moneys to be advanced and discharging the obligations of the mortgagor in that behalf incurred the mortgagor in the exercise of the powers in that behalf

possessed by it and in accordance with resolutions duly
247 adopted by its Board of Directors and by its stockholders at a meeting duly and regularly called and held has determined to make and execute its bond in the amount of—Five Million—Dollars and Whereas the said Mortgagor under and pursuant to the power and authority aforesaid has determined to secure the prompt payment of the principal and interest of said bond by executing and delivering to the mortgagee a mortgage in the terms of this indenture conveying the plants and properties hereinafter described and set forth and to that end a mortgage securing said bond in the form of this indenture was submitted to and approved by the Board of Directors and by the holders of the entire capital stock of The Company at a meeting of the said Directors and said stockholders respectively duly and regularly called and held for such purpose and the President and the Secretary of the mortgagor were duly authorized at said meeting on behalf of the mortgagor as its act and deed and under its corporate seal to execute acknowledge and deliver the same to the mortgagee and Whereas in pursuance of the resolutions of the Board of Directors and also of all the holders of the capital stock of the mortgagor adopted at meetings of said Board of Directors and of the Stockholders severally and separately called and held and in pursuance of any and all legal authority in it vested the mortgagor proposes to make execute and deliver a bond secured as hereinabove and hereinafter more particularly set forth Now therefore this Indenture Witnesseth that to secure the payment of the principal and interest of the said bond according to its tenor and effect the mortgagor in consideration of the premises and of the acceptance of such bond by the mortgagee and of the sum of—Five Million—dollars lawful money of the United States of America to it in hand well and truly paid by the said mortgagee at or before the

248 enclosing and delivery of these presents the receipt whereof is hereby acknowledged and the said mortgagor being thereby fully satisfied contented and paid has executed and delivered these presents and has given granted bargained sold aliened remised released conveyed confirmed assigned transferred pledged and set over and by these presents does give grant bargain sell alien remise

release convey confirm assign transfer pledge and set over unto the mortgagee its successors or assigns all and singular the following real estate plants factories goods chattels patents rights privileges franchises and other property to wit 1 The Plants and property now belonging to the mortgagor viz: A (a) all that lot piece or parcel of land situate lying and being in the City of Wilmington County of New Castle and State of Delaware and bounded and more particularly described as follows to wit Beginning at the intersection of the southerly side of Front Street at forty nine feet wide with the easterly side of Spruce Street at fifty feet wide thence westerly along the south side of Front Street eight hundred and ninety one feet to the right of way of the Pennsylvania Railroad thence westerly by a curved line along the said right of way and along the southerly side of Water Street to a point on the said side of Water Street distant two hundred and seventeen feet seven inches west of the westerly side of Poplar Street at fifty feet wide thence southerly and parallel to Poplar Street one hundred and eighty five feet and five and one half inches to a point thence westerly and parallel to Front Street twenty five feet and five inches to a point thence southerly and parallel to Poplar Street to low water mark of the Christiana River thence easterly by the said low water line to a point where the latter line intersects the easterly side of Spruce Street at fifty feet wide the distance between the two points on low water line being approximately one thousand three hundred and seventy nine feet measured

on a line parallel to Front Street thence northerly by the easterly side of Spruce Street three hundred and sixty five feet more or less to the place of beginning (b) All that certain lot pieces or parcel of land situate partly in the City of Gloucester and partly in the Township of Centre in the County of Camden and State of New Jersey and bounded and more particularly described as follows to wit Beginning at the southwest corner of Sixth and Water Streets in Gloucester City and extending thence (1) along the westerly line of Water Street south twenty one minutes fifty two and six-tenths seconds west true meridian seven hundred and forty two and thirty eight hundredths feet to the southerly end of Water Street thence (2) along the southerly end of said Water Street south eighty nine degrees thirty eight minutes seven and four tenths seconds east true meridian fifty feet to the easterly line thereof thence (3) along the easterly line of Water Street north twenty one minutes fifty two and six tenths seconds east true meridian sixty feet to lands now or late of Michael Haggerty deceased being northwest corner of lot 12 plan of the estate of Josiah Shivers deceased thence (4) along said Haggerty's land by the northerly line of said lot 12 south eighty nine degrees thirty eight minutes seven and four tenths seconds east true meridian one hundred feet to another corner to Haggerty thence (5) along said Haggerty and other lands parallel with Water Street north twenty one minutes fifty two and six tenths seconds East true meridian one hundred and ninety two and sixty one one hundredths feet to the southwesterly line of Charles Street thence (6) along the same south fifty seven degrees forty minutes

twenty seven and four-tenths seconds east true meridian seven hundred and seven and two-tenths feet to the intersection of the southwesterly line of Charles Street with the westerly line of Pine Street thence (7) along the westerly line of Pine Street south twenty one minutes fifty two and six-tenths seconds west true meridian
250 one hundred and three feet to the extended northerly line of lot 28 on the Shivers plan aforesaid thence (8) crossing Pine Street and partly along the northerly line of said lot 28 Shivers Plan south eighty nine degrees eight minutes seven and four tenths seconds east true meridian one hundred sixty seven and forty three hundredths feet to the southwesterly line of Charles Street thence (9) along the same south fifty seven degrees forty minutes twenty seven and four tenths seconds east true meridian three hundred and ninety two feet to the southwest corner of Charles and Grove Streets thence (10) along the westerly line of Grove Street south twenty one minutes fifty two and six tenths seconds west true meridian ninety-five and four-tenths feet to a corner to lands of the Pine Grove Brewing Company thence (11) along the same north eighty nine degrees eight minutes seven and four-tenths seconds west true meridian one hundred feet to a corner to the same thence (12) still along the same south twenty one minutes fifty two and six tenths seconds west true meridian sixty feet to another corner to the same thence (13) still along the same north eighty nine degrees eight minutes seven and four-tenths seconds west true meridian five feet to another corner to the same thence (14) still along the same and crossing the westerly end of Ninth Street south twenty one minutes fifty two and six tenths seconds west true meridian two hundred feet to the southerly line of Ninth Street thence (15) along the same south eighty nine degrees eight minutes seven and four tenths seconds east true meridian one hundred and five feet to the southwest corner of Ninth and Grove Streets thence (16) along the westerly line of Grove Street south twenty one minutes fifty two and six tenths seconds west true meridian three hundred and sixty feet to the extended northerly line of lot 138 on the aforesaid
251 Shivers plan thence (17) crossing Grove Street and along the northerly line of lot 138 on the aforesaid Shivers Plan south eighty nine degrees eight minutes seven and four-tenths seconds east true meridian one hundred and fifty feet to a corner to lot 131 said plan thence (18) along the rear line of lot 131 said plan south twenty one minutes fifty-two and six tenths seconds west true meridian twenty feet to another corner to said lot 131 said plan thence (19) still along the same south eighty nine degrees eight minutes seven and four-tenths seconds east true meridian one hundred feet to another corner of said lot in the westerly line of Elm Street thence (20) along the westerly line of Elm Street north twenty one minutes fifty two and six tenths seconds east true meridian forty feet to a corner to lot 130 said plan thence (21) along the northerly line of lot 130 said plan north eighty nine degrees eight minutes seven and four tenths seconds west true meridian one hundred feet to another corner to said lot 130 said plan thence (22)

parallel with Elm Street north twenty one minutes fifty two and six tenths seconds east true meridian one hundred feet to a corner to lot 125 said plan thence (23) along the northerly line of lot 125 said plan also crossing Elm Street south eighty nine degrees eight minutes seven and four tenths seconds east true meridian one hundred and fifty feet to the easterly line of Elm Street thence (24) along the easterly line of Elm Street north twenty one minutes fifty two and six-tenths seconds east true meridian twenty feet to a corner to lot 114 said plan thence (25) along the northerly line of lot 114 said plan south eighty nine degrees eight minutes seven and four-tenths seconds east true meridian one hundred seventy-one and eight tenths feet to the middle line of Brick Street it being known originally as the old town line thence (26) along the middle line of said Brick Street south sixteen degrees forty nine minutes forty four 252 and six-tenths seconds west true meridian three hundred sixty one and seventeen hundredths feet to a point in the extended southerly line of Brick Street where it turns eastward to Broadway or Woodbury and Gloucester Turnpike thence (27) along the southerly line of Brick Street south eighty two degrees seven minutes twenty seven and four-tenths seconds east true meridian three hundred and fifty one and five-tenths feet to a corner to lands of the Gloucester and Woodbury Turnpike Company thence (28) along the same south seven degrees fifty two minutes thirty two and six-tenths seconds west true meridian seventy seven and eight hundredths feet to another corner to same thence (29) still along the same south seventy nine degrees forty two minutes forty six four tenths seconds east true meridian one hundred and seventy five and thirty seven hundredths feet to the middle line of Broadway or and Woodbury and Gloucester Turnpike thence (30) along the middle line of said Turnpike crossing Little Timber Creek into Centre Township south one degree twenty two minutes thirty two and six-tenths seconds west true meridian one thousand six hundred and five and two hundredths feet to the centre line of right of way of the West Jersey and Seashore Railroad Company thence (31) along said centre line by a line curving to the west with a radius of three thousand six hundred and eighteen and eight-tenths feet an arc distance of four hundred and two and ninety one one-hundredths feet to the line of lands now or late of Charles Walton Trustee thence (32) along the line of lands now or late of Charles Walton Trustee and also lands now or late Richard B and Andrew W Mellon and crossing the Woodbury and Gloucester Turnpike south forty one degrees forty seven minutes twenty seven and four tenths seconds east true meridian one thousand sixty and twenty three hundredths 253 feet to a stone corner to lands now or late of W M Pratt in the line of lands now or late of Richard B and Andrew W Mellon thence (33) along the line of lands now or late of W M Pratt south twenty seven degrees fifteen minutes fifty two and six tenths seconds west true meridian six hundred and two and nine-hundredths feet to the middle line of the Mt Ephraim Road thence (34) along the middle line of said road south seventy eight degrees

twenty one minutes twenty seven and six-tenths seconds west true meridian three hundred and fifty-four and twenty nine hundredths feet to a corner of lands of Elizabeth Vollmer thence (35) along the same lands now or late of A Bengel and recrossing the Woodbury and Gloucester Turnpike north seventy six degrees eleven minutes seven and four-tenths seconds west true meridian seven hundred and fifty four and six tenths feet to a corner to said Bengel and at an angle in the line of lands of the West Jersey and Seashore Railroad Company thence (36) partly lands now or late of said Bengel crossing the right of way of the West Jersey and Seashore Railroad south forty one degrees twenty two minutes fifty two and six tenths seconds west true meridian eight hundred and thirty eight and eighty four hundredths feet to the meadow bank on the north side of Great Timber Creek thence (37) along said meadow bank north sixty six degree sixteen minutes seven and four tenths seconds west true meridian one hundred and seventy seven feet to an angle therein thence (38) still along said meadow bank north fifty five degrees twenty eight minutes seven and four-tenths seconds west true meridian two hundred and twenty six and fifty five hundredths feet to another angle therein thence (39) still along the same north forty eight degrees seventeen minutes seven and four tenths seconds west true meridian two hundred and forty seven feet to another angle therein thence (40) still along the same north fifty six degrees forty three minutes seven and four tenths seconds west
254 true meridian three hundred and seventy feet to another angle therein thence (41) still along the same north sixty three degrees fifty two minutes seven and four tenths seconds west true meridian four hundred eighty four and eighty five hundredths feet to another angle therein thence (42) still along the same north forty three degrees seven minutes and four tenths seconds west true meridian four hundred and six and fifty five hundredths feet to another angle therein thence (43) still along the same north twenty two degrees forty five minutes seven and four tenths seconds west true meridian one hundred and fifty seven and five tenths feet to another angle therein thence (44) still along the same north fifty three degrees fifty four minutes fifty two and six tenths seconds east true meridian two hundred seventy two and fifty five hundredths feet to another angle therein thence (45) still along the same north sixty two degrees fifty eight minutes fifty two and six tenths seconds east true meridian eight hundred and fifteen and seven tenths feet to another angle therein thence (46) still along the same north fifty degrees seventeen minutes fifty two and six tenths seconds east true meridian four hundred and thirty and eighty five hundredths feet thence (47) north sixteen degrees seven and four tenths seconds west true meridian three hundred and ten feet more or less to the middle of Little Timber Creek at its confluence with Great Timber Creek and in the extended line of the present bulkhead on the northeast side of Great Timber Creek northwest of said Little Timber Creek thence (48) north seventeen degrees fifty two minutes seven and four-tenths seconds west true meridian seventy two and

sixty one hundredths feet to the apex of the bulkheads on the north-easterly side of Great Timber Creek and the westerly side of Little Timber Creek thence (49) along the bulkhead on the northeast side of Great Timber Creek north seventeen degrees fifty two minutes seventeen and four-tenths seconds west true meridian eight hundred and eighty and twenty eight hundredths feet to an angle in said bulkhead thence (50) still along said bulkhead north fifty degrees thirty seven minutes seven and four-tenths seconds west true meridian three hundred forty two and nine-tenths feet to another angle in said bulkhead thence (51) still along said bulkhead north sixty four degrees twenty nine minutes three and four-tenths seconds west true meridian three hundred twenty five and forty eight hundredths feet to another angle in said bulkhead thence (52) still along said bulkhead north seventy four degrees nineteen minutes twenty two and four-tenths seconds west true meridian one hundred and forty four feet to another angle in said bulkhead thence (53) still along said bulkhead and crossing the line of the Camden Gloucester and Woodbury Railway north sixty nine degrees eighteen minutes twenty nine and four-tenths seconds west true meridian two hundred and thirteen and eighty five hundredths feet thence (54) south thirty eight degrees twenty minutes two and seven tenths seconds west true meridian eighty nine and sixty two hundredths feet to pierhead and bulkhead line at the mouth of Great Timber Creek established by the United States Government thence (55) along said Government pierhead and bulkhead line north fifty one degrees thirty nine minutes fifty seven and three tenths seconds west true meridian one thousand four hundred and one and six-hundredths feet to the pierhead line in the River Delaware established by the United States Government thence (56) along said Government pierhead line north twenty five degrees fifty four minutes six and nine-tenths seconds east true meridian one thousand nine hundred and thirty two and nine-hundredths feet to an angle in said pierhead line thence (57) still along said Government pierhead line north twenty two degrees thirty minutes thirty five and one-tenths seconds east true meridian one hundred seventeen and sixty one one-hundredths feet to a point in said Government pierhead line which said point is determined by the next two bearings at distances as follows viz commencing at the southwest corner of Sixth and Water Streets first along the southerly line of Sixth Street north eighty nine degrees thirty six minutes thirty seven and four tenths seconds west true meridian one hundred ninety five and five-tenths feet second north seventy four degrees forty five minutes forty four and four tenths seconds west true meridian one thousand sixteen and fifty three hundred feet thence (58) south seventy four degrees forty five minutes forty four and four tenths seconds east true meridian one thousand sixteen and fifty three hundredths feet to a point in the southerly line of Sixth Street thence (59) along the southerly line of Sixth Street south eighty nine degrees thirty six minutes thirty seven and four-tenths seconds east true meridian one hundred and ninety five and five

tenths feet to the place of beginning Excepting thereout and therefrom so much of the land occupied and owned by the West Jersey and Seashore Railroad Company as is included within the following bounds of said railroad to wit Beginning at the intersection of the middle of the Woodbury and Gloucester Turnpike Road now called Broadway and the West Jersey and Seashore Company's westerly line of right of way being thirty feet on a radial line from the centre thereof thence (1) southwestward along the westerly line of said right of way to its intersection with the westerly line of Broadway aforesaid thence (2) along the westerly line of said Turnpike road now called Broadway north one degree twenty two minutes thirty two and six tenths seconds east true meridian twenty seven and forty four hundredths feet to the northwesterly line of a ten foot wide strip purchased by said Railroad at a point distant forty

257 feet northwestward on a radial line from the aforesaid centre line thereof thence (3) southwestward along the westerly line of said additional purchase or strip concentric with the centre line of said Railroad and forty feet therefrom measured on a line radial thereto five hundred thirty five and five tenths feet thence (4) still along said strip south thirty one degrees five minutes fifty two and six tenths seconds west true meridian three hundred and nine and seven tenths feet to a point where said additional strip increases its width to twenty feet thence (5) north fifty eight degrees fifty four minutes seven and four tenths seconds west true meridian ten feet to a point distant fifty feet northwest at right angles from the aforesaid centre line of said railroad thence (6) still along the line of said railroad south thirty one degrees five minutes fifty two and six tenths seconds west true meridian parallel with and distant fifty feet northwestward at right angles from said centre line one thousand six hundred and five and seven tenths feet to where said line intersects the southeasterly line of the tract crossing said railroad thence (7) along said line north forty one degrees twenty two minutes fifty two and six tenths seconds east true meridian six hundred and seventy feet more or less to the easterly line of an additional purchase of a strip forty feet in width on the easterly side of said railroad said point being distant seventy feet southeastward at right angles from the aforesaid centre line of said railroad thence (8) still along the line of said railroad north thirty one degrees five minutes fifty two and six tenths seconds east six hundred and forty six feet thence (9) still along the line of said railroad north fifty eight degrees fifty four minutes seven and four tenths seconds west true meridian forty feet to a point in the original line of right of way distant thirty feet southeastward at right angles from the aforesaid centre line thence (10) still along the line of said railroad north thirty one degrees five minutes fifty two and six tenths seconds east true meridian six hundred and seven and ninety nine hundredths feet to a point in the line of said railroad where the same curves to the northward thence (11) northeastwardly still along the line of said railroad concentric with the centre line thereof and distant thirty feet southeastward on a line radial there-

from one hundred and seventeen and fourteen hundredths feet to the line of land of Charles Walton Trustee thence north forty one degrees forty seven minutes twenty seven and four tenths seconds west true meridian thirty two feet more or less to the centre line of said railroad thence (12) northeastward along the centre line of said railroad by a line curving to the west with a radius of three thousand and six hundred eighteen and eight tenths feet an arc distance of four hundred and two and ninety one one hundredths feet to the centre line of the Woodbury and Gloucester Turnpike now Broadway aforesaid thence (13) along the centre line of said Turnpike north one degree twenty two minutes thirty two and six tenths seconds east ninety feet more or less to the place of beginning Containing four and thirty hundredths acres be the same more or less Excepting also out of the above described premises lands as conveyed in fee to the West Jersey and Seashore Railroad Company by deed from said David Baird dated July 19 1914 recorded in Book No 389 of Deeds page 392 being a strip of land thirty feet wide containing 1.954 acres more or less and also another smaller piece of land as conveyed in fee to the said West Jersey and Seashore Railroad Company by deed from said David Baird dated July 19 1916 recorded in Book No 407 of Deeds page 399 &c being a piece of land on southwest side of Charles Street and in the northwest line of said West Jersey and Seashore Railroad Company containing 0.261 of acre more or less Also excepting thereout and therefrom all 259 the estate right title and interest of the Camden Gloucester and Woodbury Railway Company now the Public Service Railway Company its successors lessees and assigns to a strip of land twenty five feet in width running in through and across premises above described together with the right to erect poles for carrying trolley wires &c on a line fifteen feet from said centre line on either or both sides of said right of way as granted by William J. Thompson and wife by deed dated August 13 1904 recorded in said office in Book No 286 of Deeds page 655 &c and as now actually used and occupied by said Public Service Company (c) all that certain lot piece or parcel of land situate in the City of Gloucester City of Camden and State of New Jersey described according to a survey made by Thompson and Lennen dated March 28 1918 Beginning at the southeast corner of Sixth and Water Streets and extending thence (1) eastward along the southerly line of Sixth Street two hundred feet to the southwest corner of Sixth and Walnut Streets thence (2) southward along the westerly line of Walnut Street four hundred and fifty seven and seventy seven hundredths feet to the northwest corner of Charles and Walnut Streets thence (3) northwestward along the northeasterly line of Charles Street two hundred thirty five and seventy four hundred feet to the northeast corner of Charles and Water Streets thence (4) northward along the easterly line of Water Street three hundred and thirty three and seven hundredths feet to the place of beginning Containing one acre and eight thousand one hundred and fifty five ten-thousandths of an acre B The buildings structures erections and constructions now or here-

after placed thereon with their fixtures C. All engines furnaces
boilers machinery shafting belting pulleys dynamos dies patterns
drawings tools furniture fixtures appliances implements and
260 appurtenances of every kind and character which will now
or may be at any time hereafter situate lying or being in or
about the said plants premises and property described in clauses (a)
(b) and (c) hereof and used or provided for use in and about the
operation of said plants and property and the carrying on of the
business of the mortgagor in the same whether the same are now
owned by the said mortgagor or shall hereafter be acquired by it it
being the intention hereof that said plants premises and property
shall be and are hereby conveyed as active going and operating
manufacturing plants.

II.

All the right title and interest claim and demand of every kind
or matter legal or equitable to The Company in or to all letters
patent of any kind whether issued by the United States or any other
country and any interests therein and any licenses or contracts in
respect thereto (except such as are not assignable) which are now
held or may hereafter be acquired by The Company covering devices
or invention contained in any article or thing which it may manu-
facture sell or use in the conduct of its business.

III.

All the raw material steel iron lumber fuel oil supplies goods wares
and merchandise and products of The Company's business whether
manufactured or in process of manufacture and all other tangible
personal property goods and chattels not hereinbefore conveyed of
any and every kind name and nature which The Company may have
in its possession or which may have been acquired by it.

IV.

All the good will or the business to be conducted or carried on by
The Company as well as any and all trade marks or trade
261 names now owned by The Company including all the good
will trade marks and trade names which The Company may
have acquired.

V.

All books of account of any and every kind name and nature
now owned or which may hereafter be acquired or kept by The Com-
pany in the conduct of its business.

VI.

All bills and accounts receivable outstanding purchase or sale of
contracts or other contracts, promissory notes, checks, drafts, money

claims, demands and choses in action and all other property or things of value of any kind name or nature tangible or intangible legal or equitable of which The Company may be possessed or to which it may have become entitled by reason of any sale transfer or conveyance.

VII.

All the rights, privileges, franchises and immunities of The Company including a right to be a corporation in so far as they can be lawfully transferred and conveyed.

VII.

It is intended that the grants of the several classes of property contained in the several paragraphs and sub-paragraphs hereinbefore set forth shall each be construed and treated as a separate distinct grant for the purpose of securing the bond above referred to the same as though each of said classes of property were mortgaged and transferred to the mortgagee herein by a separate and distinct indenture so that if it should at any time appear or be held that this indenture fails to transfer to the mortgagee the title to said several and distinct classes of property or any part thereof against the creditors of the said Company other than the mortgagee such failure shall not operate to effect in any wise the transfer of the other classes of property or any part thereof but nothing herein contained shall be construed as requiring the mortgagee to resort to any particular property for the satisfaction of the indebtedness hereby secured in preference or priority to any other property hereby conveyed but it may seek satisfaction out of all said property or any part thereof in its discretion Together with all and singular the profits privileges and advantages improvements ways woods waters water courses rights liberties hereditaments and appurtenances to the same belonging or in any wise appertaining reversions and remainders rents issues and profits thereof also all the estate right title interest property claim and demand whatsoever of the said mortgagor of in and to every part and parcel thereof to have and to hold the said good will lands plants buildings patents real and personal property rights privileges franchises estates and appurtenances hereby conveyed and assigned or mentioned and intended so to be unto the mortgagee its successors or assigns forever Provided always and it is agreed by and between the parties to these presents that if the said mortgagor its successors and assigns do and shall well and truly pay or cause to be paid to the said mortgagee or to its certain attorney or attorneys successors or assigns the aforesaid debt or principal sum of Five Million dollars on the day or days and time or times hereinbefore mentioned and appointed for the payment thereof with lawful interest for the same at the rate of five per cent per annum payable semi-annually and otherwise fully and faithfully perform each and every covenant and agreement according to the conditions of a certain bond bearing even date herewith

in the sum of Five Million dollars without any deduction or defalcation for taxes assessments or any other imposition whatsoever
263 then and from thenceforth these presents and said obligation and every thing herein and therein contained shall cease determine and become absolutely void and of no effect. Anything herein and therein contained to the contrary notwithstanding. And it is covenanted between the parties hereto as follows to wit:

1.

The Mortgagor shall not or will claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the moneys to secure payment on which this mortgage is made for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof and that the said mortgagee its successors and assigns shall and may from time to time and at all times after default shall be made in the performance of the proviso or condition herein contained peaceably and quietly enter into have hold use occupy possess and enjoy all and singular the above granted and bargained premises goods chattels and personal property with the appurtenances without the let suit trouble hindrance or denial of the said mortgagor its successors or assigns or of any person or persons whatsoever.

2.

The said mortgagor shall and will keep the buildings erected and to be erected upon the lands above conveyed and all the personal property thereon insured against loss or damage by fire in some safe and responsible insurance company or companies approved by the mortgagee to an amount satisfactory to the mortgagee and cause the policies for all such insurance to be made payable to the mortgagee hereunder as its interest may appear Receipted
264 bills for premiums on all policies shall be delivered to the mortgagee with the policies. If mortgagor shall default in delivering policies and or premium receipts as aforesaid it shall be lawful for the said mortgagee to effect such insurance and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises added to the amount of the said bonds or obligation and secured by these presents and payable on demand with legal interest. In case any property so insured shall be lost or damaged any appraisement adjustment or settlement agreed upon between the Company and the insurer or insurance company shall be consented to by the mortgagee but the mortgagee shall in no way be liable for the collection of any insurance moneys in case of such loss or damage. All sums payable by reason of any single loss under such policies of insurance shall be paid to and held by the mortgagee and shall be available to the Company for making good the loss or damage either by repairing the property damaged replacing the property destroyed or acquiring additional property. Any moneys received by the mortgagee under this sec-

tion shall be paid out from time to time by the mortgagee upon the written order of the president or treasurer of the Company accompanied by his certificate that the Company has incurred and expenditure in repairing the property damaged replacing the property destroyed or acquiring additional property as the case may be. The certificates provided for in this section shall be full warrant to the mortgagee for its action on the faith thereon but the mortgagee may in its discretion in any instance require such further evidence or make such further investigation at the cost of the company as the mortgagee may deem proper for this purpose may at its discretion require independent appraisal to be made by persons elected by the mortgagee.

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3.

The mortgagor covenants that it will duly and punctually pay the principle and interest of the bond secured hereby at the dates and in the manner specified in such bond according to the true intent and meaning thereof without deduction from either principal or interest for any tax or taxes imposed by the United States or by any state county or municipality and which the mortgagor may be required to pay or to retain therefrom under or by reason of any present or future law.

4.

The mortgagor covenants that it is well seized of the real estate above described as of a good sure absolute and indefeasible estate in fee simple and it is the sole and absolute owner of the leasehold chattels real personal property and rights free and clear of any incumbrance lien or charge except as hereinabove set forth and that it will not create or suffer to be created any lien or charge having priority to or preference over the lien of these presents upon the mortgaged premises or any part thereof or upon the income thereof and within six months after the same shall accrue it will pay or cause to be discharged or will make adequate provision for the satisfaction and discharge of all lawful claims and demand of mechanics laborers and others which if unpaid might be given by law preference as a lien or charge upon said premises or any part thereof or the income thereof provided however that nothing contained in this section shall require the mortgagor to pay any such claim on demand so long as the mortgagor in good faith and by appropriate legal proceedings shall contest the validity thereof or its enforceability as a lien or charge superior to this indenture and the mortgagor further covenants that it shall and will warrant and
266 forever defend the said real and personal property and rights against the claims of all and every person claiming or to claim the same or any part thereof.

5.

The mortgagor from time to time will pay and discharge all taxes assessments and governmental charges lawfully imposed upon the

premises and property hereby mortgaged or upon any part thereof or upon the income or profits thereof the lien of which would be prior to the lien hereof so that the priority of this indenture shall be fully preserved in respect of such property. Provided however that nothing contained in this section shall require the mortgagor to pay *and* such tax assessment or charge so long as the mortgagor in good faith and by appropriate legal proceedings shall contest the validity thereof.

6.

The mortgagor its successors and assigns from time to time on written demand of the mortgagee or its successor or successors shall make do execute acknowledge and deliver all such further act deeds conveyance- and assurances in the law as may be reasonable advised devised or required for effectuating the intentions of these presents or for the better assuring and confirming unto the mortgagee and its successor or successors all and singular the property hereby conveyed assigned and transferred to the mortgagee or intended so to be.

7.

The mortgagor agrees that (except as otherwise provided hereon or upon instruction from mortgagee to the contrary) it will at all times actively conduct and carry on the business for which 267 it was incorporated and which it is now carrying on and conducting and that it will keep and maintain in good repair and condition and in active operation its several plants and properties.

8.

In case default shall be made in the payment of any interest on the bond hereby secured and any such default shall continue for the period of sixty days then and in every case of such continued default the mortgagee may by notice in writing delivered to the mortgagor declare the principal of the bond hereby secured and then outstanding to be due and payable immediately and upon any such declaration the same shall become and be due and payable immediately anything in this indenture or in said bond to the contrary notwithstanding.

(9.)

In case (1) default shall be made in the payment of any interest on the bond hereby secured and any such default shall continue for a period of sixty days or in case (2) default shall be made in the due and punctual payment of the principal of the bond hereby secured and which default shall continue for a period of sixty days or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the mortgagor and any such last mentioned default shall continue for a period of sixty days where no specific period is mentioned and for the specific period when mentioned after written notice

the mortgagee then and in every such case the mortgagee personally or by attorney and in its discretion (a) May enter into and upon all or any part of the mortgagor's real estate plants and all other property hereby conveyed to the mortgagee or which may at any time become subject to this indenture any each and every part thereof and may exclude the mortgagor therefrom and having and holding the same may use operate manage and control such of the mortgagor's plants and other properties build ships manufacture and sell boilers and paper machines and all articles produced by the mortgagor in its business execute any and all contracts and make new contracts and in general carry on and conduct the business of said mortgagor as fully as it might do if in possession thereof and upon every such entry the mortgagee from time to time either by purchase repairs or construction may maintain and restore and insure or keep insured the plants machinery tools appliances and all other chattels and personal property provided for use in connection with said business of said mortgagor whereof it shall have become possessed aforesaid and in the same manner and to the same extent as is usual with manufacturing companies at the expense of the mortgagor's estate and make all necessary and proper repairs renewals replacements alterations additions betterments and improvements thereto and thereon as to it may seem judicious and in such case the mortgagee shall have the right to manage the mortgaged premises and carry on the business and exercise all the rights and powers of the mortgagor either in the name of the mortgagor or otherwise as the mortgagee shall deem best and it shall be entitled to collect and receive all tolls earnings incomes rents issues and profits of the same and every part thereof and after deducting the expenses of operating said plants and other property and of conducting the business thereof and of all repairs maintenance renewals replacements alterations additions betterments and improvements and all payments which may be made for taxes assessments and insurance or prior or other proper charges upon said premises and property or any part thereof as well as just and reasonable compensation for its own services and for all agents clerks servants and other employees by it properly engaged and employed it shall employ the moneys arising as aforesaid as follows In case the principal of the bond hereby secured shall not have become due by declaration or otherwise to the payment of the interest in default with interest hereon at five per cent In case the principal of the bond hereby secured shall have become due by declaration or otherwise first to the payment of the principal and accrued interest in the manner provided in the bond. Upon the payment in full of whatever may be due for the principal and interest of the said bond or be payable for other purposes the premises shall be returned to the mortgagor or (b) May in the name of the mortgagor and as its attorney in fact for that purpose by these presents duly constituted sell to the highest and best bidder all and singular the real estate plants factories patents good will rights privileges goods and chattels and all other property held by or conveyed to it under this indenture or intended so to be and all right title and in-

terest claim and demand therein and the right of redemption thereof in one lot as an entirety or in separate lots as the mortgagee shall deem best and in one sale and any number of separate sales held at one time or any number of times which said sale or sales shall be made at public auction at such place and at such time and upon such terms as the mortgagee may fix and briefly specify in the notice of sale to be given as herein provided or as may be required by law if the mortgagee shall determine to sell said mortgaged property in

270 parcels it may in its discretion make the same of any one of the plants and properties herein above described at any place where said plant and property may be located or (c) May proceed to protect and enforce its rights under this indenture by a suit or suits in equity or at law whether for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted or for any foreclosure hereunder or for the enforcement of any other appropriate legal or equitable remedy as the mortgagee being advised by counsel learned in the law shall deem most effectual to protect and enforce the rights aforesaid. In case the mortgagee shall have proceeded to enforce any right under this indenture by foreclosure entry or otherwise and such proceedings shall have been discontinued or abandoned because of any waiver or for any other reason or shall have been determined adversely to the mortgagee then and in every such case the mortgagor and mortgagee shall be restored to their former position and rights hereunder in respect of the mortgaged property and all rights remedies and powers of the mortgagee shall continue as though no such proceeding had been taken.

10.

Notice of any sale by the mortgagee pursuant to any provision of this indenture shall state the time and place when and where the same is to be made and shall contain brief general description of the property to be sold such notice shall be published once in each week for four successive weeks in a newspaper published in the County in which such sale shall take place. The mortgagee shall give such further or additional notice as may be required by the laws of the State where such sale may be made. The mortgagee from time to time may adjourn any sale or sales by it to be made under

271 the provisions of this indenture by announcement at the time and place appointed for such sale or for such adjourned sale or sales and without further notice or publication it may make such sale or sales as the time and place to which the same shall be so adjourned.

11.

Upon the completion of any sale or sales under this indenture the mortgagee shall execute and deliver to the accepted purchaser or purchasers all such deeds conveyances bills of sale or other instruments in writing as may be requisite convenient necessary or desirable to vest in the purchaser or purchasers the complete title to the

properties sold. The mortgagee and its successors are hereby appointed the true and lawful attorney or attorneys irrevocable of the mortgagor in its name and stead or otherwise to make execute and acknowledge and deliver all such deeds conveyances bills of sale or other written instruments the mortgagor hereby ratifying and confirming all of its said attorney or attorneys shall lawfully *doe* by virtue hereof Any sale or sales made under or by virtue of this indenture whether under the power of sale hereby granted and conferred or under and by virtue of judicial proceedings shall operate to divest all right title interest claim and demand whatsoever either at law or in equity of the mortgagor of in and to the property so sold and shall be a perpetual bar both at law and in equity against the mortgagor its successors and assigns and against any and all persons claiming or to claim the property sold or any part thereof from through or under the mortgagor its successors or assigns and the receipt of the mortgagee for the consideration money paid at any such sale or sales shall be a sufficient discharge to the purchaser without any liability upon the part of the purchaser to see to the application of the purchase money or be bound to inquire as to the authorization necessity expediency or regularity of any such sale or sales.

12.

In case of such sale or sales whether under the power of sale hereby granted or pursuant to judicial proceedings the principal sum of the bond hereby secured if not previously due shall immediately thereupon become due and payable anything in said bond or this indenture contained to the contrary notwithstanding.

13.

The purchase money proceeds and avails of any such sale or sales whether under the power of sale hereby granted or pursuant to judicial proceedings together with any sums which then may be held by the mortgagee under any of the provisions of this indenture as part of the mortgagor's estate or the proceeds thereof shall be applied as follows First To the payment of the costs and expenses of such sale including a reasonable compensation to the mortgagee its agents attorneys and counsel and of all expenses liabilities and advances made or incurred by the mortgagee Second To the payment of the surplus if any to the mortgagee to be applied to the payment of the principal and interest of the bond secured by said mortgage to it and upon the payment in full of such bond and interest the surplus if any shall be returned to the mortgagor its successors or assigns or to whomsoever may be lawfully entitled to receive the same.

14.

In case the mortgagor shall make default in any of the respects mentioned in this article and at any time during the continuance of such default there shall be any existing judgment against the mortgagor unsatisfied and unsecured by bond or

appeal or in case the mortgagor shall make any assignment for the benefit of its creditors or in case in any judicial proceedings by any party other than the mortgagee a receiver assignee or trustee in bankruptcy shall be appointed of the mortgagor or a judgment or order entered for the sequestration of its property or by any mortgagee or other person having a lien thereon and it shall not within such time and in such manner as may be permitted by law cause said property to be released and discharged therefrom by giving bond or otherwise the mortgagee shall be entitled forthwith to exercise the right of entry herein conferred and also any and all other rights and powers herein conferred and provided to be exercised by the mortgagee upon the occurrence and continuance of default as hereinbefore provided without awaiting said prescribed default period and as a matter of right the mortgagee shall thereupon be entitled to the appointment of a receiver of the premises hereby mortgaged and pledged and of the earnings income rents issues and profits thereof with such powers as the court making such appointment shall confer

15.

In the event that said mortgagee shall commence any proceedings at law or in equity for the purpose of foreclosing this mortgage the said mortgagee shall as a matter of right without notice and without regard to the adequacy of the securities be entitled to the appointment of a receiver of and for all and singular the property hereby conveyed and by and through said receiver to take possession thereof and operate the same and receive the tolls rents incomes issues and profits thereof which are hereby assigned to the mortgagee as further security for the payment of the indebtedness.

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16.

The mortgagor will not at any time insist upon or plead or in any manner whatever claim or take the benefit or advantage of any stay or extension law now or at any time hereafter in force nor will it claim take or desist upon any benefit or advantage from any law now or hereafter enforced providing for valuation or appraisement of the mortgaged property or any part thereof prior to any sale or sales thereof to be made pursuant to any provisions herein contained or to the decreed judgment or order of any court of competent jurisdiction nor after any such sale or sales will it claim or exercise any right under any statute enacted by any state or otherwise to redeem the property so sold or any part thereof and it hereby expressly waives all benefit and advantage of any such law or laws and it covenants that it will not hinder delay or impede the execution of any power herein granted and delegated to the mortgagee but that it will suffer and permit the execution of every such power as though no such law or laws has been made or enacted.

17.

Except as herein expressly provided to the contrary no remedy herein contained conferred upon or reserved to the mortgagee is in-

tended to be exclusive of any other remedy or remedies but each and every such remedy shall be cumulative and *and* shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute but no action at law shall be instituted against the mortgagor to enforce the contractual liability of the mortgagor by reason of its covenants and promises contained in said bond until the property hereby mortgaged shall have been exhausted by pursuit of the remedies herein provided.

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18.

No delay or omission of the mortgagee to exercise any right or power accruing upon any default continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default acquiescence therein and every power and remedy given by this article to the mortgagee may be exercised from time to time and as often as may be deemed expedient by the mortgagee.

19.

If at any time in the future that portion of the property heretofore described to the mortgagee as designated for a housing development to house the laborers of the Company shall be developed for that purpose and agreements for such housing development satisfactory to the mortgagee are entered into between the mortgagor and mortgagee or the mortgagor and other parties then and in that event the mortgagee agrees to release from the lien and effect of this indenture the said property so required for the housing development.

20.

While in possession of the mortgaged premises the mortgagor shall also have full power in its discretion from time to time to dispose free from the lien of this indenture any portion of the implements machinery tools appliances furniture and fixtures embraced within this indenture which may have become unfit for use replacing the same by or substituting for the same new implements machinery tools appliances furniture and fixtures which shall become subject to the first lien of this indenture the mortgagor further agrees that it will not sell hypothecate or deliver possession of or in any manner impair the value of any of the property covered by this mortgage (except in the ordinary conduct of its business) unless it shall have first obtained the written consent of the mortgagee.

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21.

Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bond hereby secured or some part of such interest or principal or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the mortgagor and until such default shall

have continued beyond the period of grace if any herein provided in respect thereof the mortgagor its successors and assigns shall be suffered and permitted to retain the actual possession of all the property that may be conveyed and mortgaged to the mortgagee and to manage operate and use the same and every part thereof with the rights and privileges appertaining thereto and to collect and receive take use and enjoy the tolls earnings income rents issues and profits thereof and prior to such default and the continuance thereof as aforesaid the mortgagor shall have the right in its discretion to bring suits at law or in equity against infringers of any of the patents of the United States hereby mortgaged.

22.

If when the bond hereby secured shall have become due and payable or at the option of the mortgagor upon thirty days' notice to the mortgagee the mortgagor shall well and truly pay or cause to be paid the whole amount of the principal moneys and interest due upon the bond then outstanding and also shall pay or cause to be paid all other sums payable hereunder by the mortgagor and shall well and truly keep and perform all the things herein required
 277 to be kept and performed by it according to the true intent and meaning of this indenture then and in that case all the property rights and interests hereby conveyed or pledged shall revert to the mortgagor and the estate right title and interest of the mortgagee shall thereupon cease determine and become void and the mortgagee in such case upon demand of the mortgagor and at its cost and expense shall execute proper instruments acknowledging satisfaction of this indenture and such deeds of release or conveyance as shall be necessary proper or requisite to revert in the mortgagor the property then subject to this indenture free and discharged from the lien thereof.

23.

No recourse under or upon any obligation covenant or agreement of this indenture or of the bond hereby secured or because of the creation of any indebtedness hereby secured shall be had against any incorporator stockholder officer or director of the Company either directly or through the company it being expressly agreed and understood that this indenture and the obligation hereby secured are solely corporate obligations.

24.

All the covenants stipulations promises undertakings and agreements herein contained by or on behalf of the mortgagor shall bind its successors whether so expressed or not for every purpose of this indenture including the execution issue and use of the bond hereby secured the term "the mortgagor" includes and means not only the party of the first part hereto but also its successors and assigns.

25.

In order to facilitate the record of this indenture the same
 278 may be simultaneously executed in several counterparts each
 of which so executed shall be deemed to be an original and
 such counterparts shall together constitute but one and the same in-
 strument.

In witness whereof the said mortgagor has caused its seal duly
 attested to be affixed to three counterparts hereof and these presents
 to be subscribed by its President the second day of August nineteen
 hundred and eighteen. The Pusey and Jones Company, by Chris-
 topher Hannevig, President. [Corp. Seal.] Attest Ralph James M.
 Bullove, Secretary.

Signed sealed and delivered in the presence of David Armstrong.

STATE OF PENNSYLVANIA,

County of Philadelphia, ss:

Howard Coonley being duly sworn saith that he is the vice-presi-
 dent of the United States Shipping Board Emergency Fleet Corpora-
 tion the mortgagee above mentioned and duly authorized agent in
 its behalf; that the true consideration of the above mortgage is the
 loan of Five Million Dollars secured by a bond of the mortgagor
 advanced for the purpose and in the manner especially set forth in
 the mortgage and to be repaid at the dates and in the manner set
 forth in said mortgage. Howard Coonley.

Subscribed and sworn to before me this third day of August, 1918.
 Eleanor L. Jaquette, Notary Public. [Seal.] Commission expires
 Feb. 21, 1919.

STATE OF NEW YORK,

County of New York, ss:

Personally came before me Christoffer Hannevig president
 279 of the Pusey and Jones Company the above named mort-
 gagor and duly authorized agent in its behalf who being by
 me duly sworn on his oath does depose and say for himself that the
 above mortgage was made for the bonafide purpose of securing a debt
 and was not made to cover the property of the mortgagor or to protect
 it from its creditors or to hinder or delay them in the collection of
 their debts. Christoffer Hannevig.

Subscribed and sworn to before me this 2nd day of August 1918.
 Cyril R. Taylor, Notary Public, Kings Co. [Seal.] Certificate filed
 N. Y. County, No. 154. No. 76134, series B.

STATE OF NEW YORK,

County of New York, ss:

I William F. Schneider Clerk of the County of New York and also
 clerk of the supreme court for the said county the same being a court
 of record do hereby certify that Cyril R Taylor whose name is sub-

scribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such deposition or proof and acknowledgment a Notary Public acting in and for the said county duly commissioned and sworn and authorized by the laws of said state to take depositions and also acknowledgments and proofs of deeds or conveyances for lands tenements or hereditaments in said state of New York that there is on file in the clerk's office of the county of New York a certified copy of his appointment and qualification as notary public of the County, Kings with his autograph signature and further that I am well acquainted with the handwriting of Said Notary public and verily believe that the signature to such deposition or certificate of proof or acknowledgment is genuine.

280 In testimony whereof I have hereunto set my hand and affixed the seal of the said Court and county this 2nd day of Aug. 1918. Wm. F. Schneider, Clerk. [Court Seal.]

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Personally came before me Howard Coonley Vice President of the United States Shipping Board Emergency Fleet Corporation the mortgagee above named who being by me duly sworn on his oath does depose and say for himself that the above mortgage was made for the bonafide purpose of securing a debt and was not made to cover the property of the mortgagor or to protect it from its creditors or to hinder or delay them in the collection of their debts. Howard Coonley.

Subscribed and sworn to before me this 3d day of August, 1918 Eleanor L. Jaquette, Notary Public. [Seal.] Commission expire Feb. 21st, 1919. 34920.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

In the Courts of Common Pleas of Philadelphia County.

I, Henry F. Walton Prothonotary of the Courts of Common Pleas of said County which are courts of record having a common seal being the officer authorized by the laws of the State of Pennsylvania to make the following certificate do certify that Eleanor L. Jaquette Esquire before whom the annexed affidavit was made was at the time of so doing a Notary Public for the Commonwealth of Pennsylvania residing in the County of Philadelphia duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands tenements and hereditaments to be recorded in said State of Pennsylvania and to all whose act as such full faith and credit are and ought to be given as well in courts of Judicature as elsewhere and that I am well acquainted with the handwriting of the said

Notary Public and verily believe his signature thereto is genuine and that the said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 3rd day of August in the year of our Lord one thousand nine hundred and eighteen (1918). Henry F. Walton, Prothonotary. [Court Seal.]

STATE OF NEW YORK.

County of New York, ss:

Be it remembered that on this 2nd day of August in the year of our Lord one thousand nine hundred and eighteen personally came before me Cyril R Taylor a Notary Public for the State of New York Christopher Hennevig President of the Pusey and Jones Company a corporation as aforesaid party to this indenture known to me personally to be such and acknowledged this indenture to be his act and deed and the act and deed of said The Pusey Jones Company a corporation as aforesaid and his signature thereto as president to be in his own handwriting and the seal thereunto affixed to be the common and corporate seal of said corporation and that said execution the acknowledgment and delivery of this indenture were duly authorized by resolution of the directors of said corporation.

Given under my hand and seal of office of the day and year aforesaid. Cyril R. Taylor, Notary Public, Kings Co. [Seal.] Certificate filed N. Y. County No. 151.

282 STATE OF NEW YORK.

County of New York, ss:

Be it remembered that on this 2nd day of August in the year of our Lord one thousand nine hundred and eighteen before me Cyril R. Taylor personally appeared Ralph James M. Bullock who being duly sworn on his oath made due proof to my satisfaction that Christopher Hennevig is president and deponent is secretary of the Pusey and Jones Company the corporation Mortgagor in the above mortgage named, that deponent well knows the common seal of said corporation that the seal affixed to said mortgage is the common seal of said corporation and was so affixed thereto, that said mortgage was signed and delivered by said president in the presence of deponent as the voluntary act and deed of said corporation pursuant to resolution of the Directors thereof and that deponent thereupon signed his name thereto as a witness thereof. Ralph James M. Bullock.

Sworn and subscribed before me the day and year aforesaid, all of which I do hereby certify. Cyril R. Taylor, Notary Public, Kings Co. [Seal.] Certificate filed N. Y. County No. 151. Recorded August 3rd, 1918, at 11.00 A. M. by Edward W. Delacroix, Register.

scribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such deposition or proof and acknowledgment a Notary Public acting in and for the said county duly commissioned and sworn and authorized by the laws of said state to take depositions and also acknowledgments and proofs of deeds or conveyances for lands tenements or hereditaments in said state of New York that there is on file in the clerk's office of the county of New York a certified copy of his appointment and qualification as notary public of the County, Kings with his autograph signature and further that I am well acquainted with the handwriting of Said Notary public and verily believe that the signature to such deposition or certificate of proof or acknowledgment is genuine.

280 In testimony whereof I have hereunto set my hand and affixed the seal of the said Court and county this 2nd day of Aug. 1918. Wm. F. Schneider, Clerk. [Court Seal.]

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Personally came before me Howard Coonley Vice President of the United States Shipping Board Emergency Fleet Corporation the mortgagee above named who being by me duly sworn on his oath does depose and say for himself that the above mortgage was made for the bonafide purpose of securing a debt and was not made to cover the property of the mortgagor or to protect it from its creditors or to hinder or delay them in the collection of their debts. Howard Coonley.

Subscribed and sworn to before me this 3d day of August, 1918. Eleanor L. Jaquette, Notary Public. [Seal.] Commission expires Feb. 21st, 1919. 34920.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

In the Courts of Common Pleas of Philadelphia County.

I, Henry F Walton Prothonotary of the Courts of Common Pleas of said County which are courts of record having a common seal being the officer authorized by the laws of the State of Pennsylvania to make the following certificate do certify that Eleanor L. Jaquette Esquire before whom the annexed affidavit was made was at the time of so doing a Notary Public for the Commonwealth of Pennsylvania residing in the County of Philadelphia duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyance for lands tenement
281 and hereditaments to be recorded in said State of Pennsylvania and to all who-e act as such full faith and credit an and ought to be given as well in courts of Judicature as elsewhere

Notary Public and verily believe his signature thereto is genuine and that the said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 3rd day of August in the year of our Lord one thousand nine hundred and eighteen (1918). Henry F. Walton, Prothonotary. [Court Seal.]

STATE OF NEW YORK,

County of New York, ss:

Be it remembered that on this 2nd day of August in the year of our Lord one thousand nine hundred and eighteen personally came before me Cyril R Taylor a Notary Public for the State of New York Christopher Hennevig President of the Pusey and Jones Company a corporation as aforesaid party to this indenture known to me personally to be such and acknowledged this indenture to be his act and deed and the act and deed of said The Pusey Jones Company a corporation as aforesaid and his signature thereto as president to be in his own handwriting and the seal thereunto affixed to be the common and corporate seal of said corporation and that said execution the acknowledgment and delivery of this indenture were duly authorized by resolution of the directors of said corporation.

Given under my hand and seal of office of the day and year aforesaid. Cyril R. Taylor, Notary Public, Kings Co. [Seal.] Certificate filed N. Y. County No. 151.

282 STATE OF NEW YORK,

County of New York, ss:

Be it remembered that on this 2nd day of August in the year of our Lord one thousand nine hundred and eighteen before me Cyril R. Taylor personally appeared Ralph James M. Bullock who being duly sworn on his oath made due proof to my satisfaction that Christoffer Hennevig is president and deponent is secretary of the Pusey and Jones Company the corporation Mortgagor in the above mortgage named, that deponent well knows the common seal of said corporation that the seal affixed to said mortgage is the common seal of said corporation and was so affixed thereto, that said mortgage was signed and delivered by said president in the presence of deponent as the voluntary act and deed of said corporation pursuant to resolution of the Directors thereof and that deponent thereupon signed his name thereto as a witness thereof. Ralph James M. Bullock.

Sworn and subscribed before me the day and year aforesaid, all of which I do hereby certify. Cyril R. Taylor, Notary Public, Kings Co. [Seal.] Certificate filed N. Y. County No. 151. Recorded August 3rd, 1918, at 11.00 A. M. by Edward W. Delacroix, Register.

STATE OF NEW JERSEY,
County of Camden:

I, Edward W. Delacroix, Register of Deeds and Mortgages for the County of Camden, do hereby certify, that the foregoing is a true copy of the record of the Mortgage from Pusey & Jones Company to United States Shipping Board Emergency Fleet Corporation as the same is of record in my office in Book 157 of Mortgages page 78 &c. Together with the marginal note appearing on said record.

283 In testimony whereof, I have hereunto set my hand and affixed my official seal, at Camden, this Third day of March, A. D. 1920. [Seal Register of Deeds, Camden County, N. J. 1915.]

Edward W. Delacroix, Register.

[Endorsed:] 36 2754. Certified copy of Mortgage. Pusey & Jones Co. to United States Shipping Board Emergency Fleet Corp. Paid 17.00.

EXHIBIT D.

[To Be Read with Par. 15 of Bill.]

Memorandum of Agreement made the 28th day of January, 1918, between the United States Shipping Board Emergency Fleet Corporation, a corporation of the District of Columbia, representing the United States of America, hereinafter called the "Fleet Corporation," party of the first part; the Cunard Steamship Company, Limited, a corporation existing under the laws of the United Kingdom of Great Britain and Ireland, and having an agency in the Borough of Manhattan, City of New York, hereinafter called the "Cunard Line" party of the second part, and the Pennsylvania Shipbuilding Company, a corporation of the State of Delaware and having its principal place of business in the City of ———, hereinafter called the "Shipbuilding Company," party of the third part.

A contract in writing, under date of August 7, 1916, was made between said Shipbuilding Company and Lars Christensen, hereinafter called the "Original Purchaser," for the construction of a certain ship as therein described, the hull number of which was

284 Tanker #1. By means of certain intermediate assignments

the interest of said original purchaser in said contract was duly transferred to the Cunard Line. The Cunard Line paid the owner of said contract therefor the sum of Nine hundred and eighty-seven thousand Dollars (\$987,000.00). Thereafter the Cunard Line and the Shipbuilding Company substituted for said contract a new contract for said ship under date of February 13, 1917. The principal provisions of said original contract and the assignments thereof and said new contract are stated in Exhibit I, hereto annexed.

On August 3rd, 1917, the Fleet Corporation, acting in accordance with the provisions of the Urgent Deficiency Act of June 15th, 1917, and the Executive Order of July 11th, 1917, duly requisitioned the said ship and the materials therefor, and ordered the Shipbuilding Company to complete the same on behalf of the United States.

The said Urgent Deficiency Act provides that just compensation be paid to the parties from whom ships were so requisitioned.

The Fleet Corporation and the Shipbuilding Company have heretofore agreed on the just compensation to be paid for the completion of said ship.

The Cunard Line has presented a claim against the United States for compensation for a total sum of One million four hundred twenty-one thousand seven hundred ninety 91/100 Dollars (\$1,421,790.91), for moneys paid on account for the foregoing ship, in accordance with the provisions of the new contract, and also for certain expenses connected with the construction of said ship and the acquisition of the original contract therefor, which sum includes interest to December 31st, 1917.

The Fleet Corporation and the Cunard Line are desirous of fixing the amount of the compensation to be paid. The Fleet Corporation is desirous of obtaining a bill of sale from the Cunard Line of all its right, title and interest in and to the said ship and the materials therefor.

The Fleet Corporation is desirous of procuring a release from the Cunard Line and also from the Shipbuilding Company. The Cunard Line is desirous of procuring a release from the Shipbuilding Company. The Shipbuilding Company is desirous of receiving a release from the Cunard Line.

Now, therefore, for and in consideration of the premises and of the payment of the sum hereinafter named, and of mutual releases, it is agreed as follows:

I.

The Cunard Line hereby represents and warrants that it is the sole owner of the new contract with the Shipbuilding Company, as described in the preamble, and that no other person, firm or corporation had at the time of such requisitioning any title thereto or had or has any lien by way of mortgage or otherwise upon either the ship described in said contract, the materials therefor, or on the contract itself, with the exception of liens, if any, on the ship itself or the materials therefor, arising by reason of the actions or omissions of parties other than the Cunard Line.

The Cunard Line further represents and warrants that the said original contract was a valid one, and that the Cunard Line has paid the original purchaser or former owner or owners in full therefor, and hereby agrees to indemnify the Fleet Corporation, and/or the United States from all claims of the original purchaser or former owner and/or owners arising out of said ship and/or contract and/or the requisition thereof.

286 The Shipbuilding Company represents and warrants that no other person, firm or corporation other than the Shipbuilding Company and the Cunard Line has any lien by way of mortgage or otherwise upon the ship described in said new contract or the materials therefor.

II.

The Cunard Line hereby makes claim, in accordance with the provisions of the said Urgent Deficiency Act, for compensation for all damages arising out of the said Requisition Order, in so far as it affects the said ship, the materials therefor, and the said contract amounting to a total of One million four hundred twenty-one thousand seven hundred ninety 91/100 Dollars (\$1,421,790.91).

III.

The Fleet Corporation, in accordance with the provisions of said Urgent Deficiency Act and the Executive Order of July 11th, 1917, hereby determines that the just compensation to be paid to the Cunard Line for the satisfaction of the said claim is the sum hereinabove stated in Clause II.

IV.

The Cunard Line hereby transfers, sets over and assigns to the United States, represented by the Fleet Corporation, all its right, title and interest in and to the said ship, hereinabove described, and the materials therefor; and agrees that upon demand of the Fleet Corporation, at its expense; it will execute any further documents necessary or proper to complete the said transfer. Said assignment, and acceptance thereof, shall not be construed to change or amend in any way any of the provisions of the agreements heretofore
287 made between the Shipbuilding Company and the Fleet Corporation relating to the completion of the said ship for the United States and to the compensation to be paid therefor.

V.

The Cunard Line releases the Shipbuilding Company from all claims arising in any way out of the new contract hereinabove referred to and specifically waives the delivery of the ship contracted for under said contract, either during the present war or thereafter, anything in the said contract to the contrary notwithstanding.

The Shipbuilding Company hereby releases the United States, the Fleet Corporation and the Cunard Line and each of them from any and all claims arising out of the new contract hereinabove referred to and specifically waives its rights, if any, to deliver to the Cunard Line or to any other person the ship contracted for or any other ship under said contract, either during the present war or thereafter, but nothing herein contained shall relieve the Shipbuilding Company from its obligation to deliver the said ship to the United States or relieve the Fleet Corporation from its obligation to the Shipbuilding Company to pay the compensation heretofore agreed to be paid by the Fleet Corporation.

VI.

The Cunard Line hereby releases the United States and the United States Shipping Board Emergency Fleet Corporation and each of them from all liability with respect to said ship materials and new contract arising out of the said Requisition Order of August 3rd, 1917, and acknowledged receipt in full of the claim hereinabove referred to.

288 In witness whereof, the parties hereto have caused these presents to be signed by their duly authorized officer the day and year first above written. United States Shipping Board Emergency Fleet Corporation, by Howard Coonley, V. P. Cunard Steamship Company, Limited, by I. Hay Green, General Agent. Pennsylvania Shipbuilding Corp., by Henry G. Barstar, Treas. [Seal the Pusey and Jones Company, Incorporated Jan. 28th, 1879, Wilmington, Delaware.] The Pusey & Jones Co. Henry G. Barstar, Treasurer.

EXHIBIT No. 1.

The contract first referred to in the foregoing agreement was made between Lars Christensen and Pennsylvania Shipbuilding Company, dated August 7, 1916, for the construction of a single screw steel bulk oil steamship Yard No. Tanker #1, for the agreed price of \$980,000.

It was assigned by Lars Christensen to A. Norbom by assignment dated ————.

It was further assigned by A. Norbom to Christoffer Hannevig by assignment dated March 1, 1917.

It was further assigned by Christoffer Hannevig to the Cunard Steamship Company, Limited, by assignment dated March 1, 1917.

289 By agreement between the parties a new form of contract was substituted for the foregoing. Said new contract was made between the Pennsylvania Shipbuilding Company, and Cunard Steamship Company, Limited, dated February 13, 1917, for the construction of said vessel for the agreed price of \$1,575,000.

[Endorsed:] United States Shipping Board Emergency Fleet Corporation, 1st part, Cunard Steamship Company, Limited, 2nd part, and Pennsylvania Shipbuilding Company, 3rd part, Agreement.

EXHIBIT E.

(To Be Read with Par. 15 of Bill.)

Memorandum of agreement made the 28th day of January, 1918, between the United States Shipping Board Emergency Fleet Corporation, a corporation of the District of Columbia, representing the United States of America, hereinafter called the "Fleet Corporation," party of the first part; the Cunard Steamship Company, Limited, a corporation existing under the laws of the United King-

dom of Great Britain and Ireland, and having an agency in the Borough of Manhattan, City of New York, hereinafter called the "Cunard Line," party of the second part, and the Pusey & Jones Company, a corporation of the State of Delaware and having its principal place of business in the City of Wilmington, Del., hereinafter called the "Shipbuilding Company," party of the third part.

290 A contract in writing, under date of September 19, 1916, was made between said Shipbuilding Company and Christopher Hannevig, hereinafter called the "Original Purchaser," for the construction of a certain ship as therein described, the hull number of which was 1337A \pm 1. By means of a certain intermediate assignment the interest of said original purchaser in said contract was duly transferred to the Cunard line. The Cunard Line paid the owner of said contract therefor the sum of Two hundred and eighty-eight thousand Dollars (\$288,000.00). The principal provisions of said contract and the assignment thereof are stated in Exhibit 1, hereto annexed.

On August 3rd, 1917, the Fleet Corporation, acting in accordance with the provisions of the Urgent Deficiency Act of June 15th, 1917, and the Executive Order of July 11th, 1917, duly requisitioned the said ship and the materials therefor and ordered the Shipbuilding Company to complete the same on behalf of the United States.

The said Urgent Deficiency Act provides that just compensation be paid to the parties from whom ships were so requisitioned.

The Fleet Corporation and the Shipbuilding Company have heretofore agreed on the just compensation to be paid for the completion of said ship.

The Cunard Line has presented a claim against the United States for compensation for a total sum of Four hundred nineteen thousand and forty-four 92 100 Dollars (\$419,044.02), for moneys paid on account for the foregoing ship, in accordance with the provisions of the contract, and also for certain expenses connected with the construction of said ship and the acquisition of the contract therefor, which sum includes interest to December 31st, 1917.

The Fleet Corporation and the Cunard Line are desirous

291 of fixing the amount of the compensation to be paid. The Fleet Corporation is desirous of obtaining a bill of sale from the Cunard Line of all its right, title and interest in and to the said ship and the materials therefor.

The Fleet Corporation is desirous of procuring a release from the Cunard Line and also from the Shipbuilding Company. The Cunard Line is desirous of procuring a release from the Shipbuilding Company. The Shipbuilding Company is desirous of receiving a release from the Cunard Line.

Now, therefore, for and in consideration of the premises and of the payment of the sum hereinafter named, and of mutual releases, it is agreed as follows:

I.

The Cunard Line hereby represents and warrants that it is the sole owner of the contract with the Shipbuilding Company, as described in the preamble, and that no other person, firm or corporation had at the time of such requisitioning any title thereto or had or has any lien by way of mortgage or otherwise upon either the ship described in said contract, the materials therefor, or on the contract itself, with the exception of liens, if any, on the ship itself or the materials therefor arising by reason of the actions or omissions of parties other than the Cunard Line.

The Cunard Line further represents and warrants that the said contract was a valid one, that the Cunard Line has paid the original purchaser or former owner or owners in full therefor, and hereby agrees to indemnify the Fleet Corporation, and/or the United States from all claims of the original purchaser or former owner and/or owners arising out of said ship and/or contract and/or the requisition thereof.

292 The Shipbuilding Company represents and warrants that no other person, firm or corporation other than the Shipbuilding Company and the Cunard Line has any lien by way of mortgage or otherwise upon the ship described in said contract or the materials therefor.

II.

The Cunard Line hereby makes claim, in accordance with the provisions of the said Urgent Deficiency Act, for compensation for all damages arising out of the said Requisition Order, in so far as it affects the said ship, the materials therefor, and the said contract, amounting to a total of Four hundred nineteen thousand and forty-four 02/100 Dollars (\$419,044.02).

III.

The Fleet Corporation, in accordance with the provisions of said Urgent Deficiency Act and the Executive Order of July 11th, 1917, hereby determines that the just compensation to be paid to the Cunard Line for the satisfaction of the said claim is the sum hereinabove stated in Clause II.

IV.

The Cunard Line hereby transfers, sets over and assigns to the United States, represented by the Fleet Corporation, all its right, title and interest in and to the said ship, hereinabove described, and the materials therefor; and agrees that upon demand of the Fleet Corporation, at its expense, it will execute any further documents necessary or proper to complete the said transfer. Said assignment, and acceptance thereof, shall not be construed to change or amend in any way any of the provisions of the agreements heretofore made between the Shipbuilding Company and the Fleet

Corporation relating to the completion of the said ship for the United States and to the compensation to be paid therefor.

V.

The Cunard Line releases the Shipbuilding Company from all claims arising in any way out of the contract hereinabove referred to and specifically waives the delivery of the ship contracted for under the contract, either during the present war or thereafter, anything in the said contract to the contrary notwithstanding.

The Shipbuilding Company hereby releases the United States, the Fleet Corporation and the Cunard Line and each of them from any and all claims arising out of the contract hereinabove referred to and specifically waives its rights, if any, to deliver to the Cunard Line or to any other person the ship contracted for or any other ship under said contract, either during the present war or thereafter, but nothing herein contained shall relieve the Shipbuilding Company from its obligation to deliver the said ship to the United States or relieve the Fleet Corporation from its obligation to the Shipbuilding Company to pay the compensation heretofore agreed to be paid by the Fleet Corporation.

VI.

The Cunard Line hereby releases the United States and the United States Shipping Board Emergency Fleet Corporation and each of them from all liability with respect to said ship materials and contract arising out of the said Requisition Order of August 3rd, 1917, and acknowledges receipt in full of the claim hereinabove referred to.

291 In witness whereof, the parties hereto have caused these presents to be signed by their duly authorized officer the day and year first above written. United States Shipping Board Emergency Corporation, by Howard Conley, Vice Pres. Cunard Steamship Company, Limited, by I. Hay Green, General Agent. [Seal the Pusey and Jones Company, Incorporated Jan. 28th, 1879, Wilmington, Delaware.] The Pusey and Jones Company, by Christoffer Hannevig, President.

EXHIBIT No. 1.

The contract referred to in the foregoing agreement was made between the Pusey & Jones Company and Christoffer Hannevig dated September 19, 1916, for the construction of a single screw steel steamer, Yard No. 1337A #1, for the agreed price of \$790,000.

It was assigned by Christoffer Hannevig to the Cunard Steamship Company, Limited, by assignment dated March 20, 1917.

By agreement between Pusey & Jones Company and Cunard Steamship Company, Limited, dated March 20, 1917, said contract was modified in certain respects.

[Endorsed:] United States Shipping Board Emergency Fleet Corporation, first part, Cunard Steamship Company, Limited, 2nd part, and Pusey & Jones Company, 3rd part. Agreement.

EXHIBIT B.

In the Supreme Court of the District of Columbia.

No. 38163. In Equity.

THE PUSEY AND JONES COMPANY, Plaintiff,

v.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
Defendant.

*Order Overruling Motion to Dismiss and Granting Injunction
Pendente Lite.*

This cause having come on to be heard upon the motion of defendant, United States Shipping Board Emergency Fleet Corporation, to dismiss plaintiff's bill of complaint herein for want of jurisdiction on part of the court to entertain the same, was on the eighteenth and twentieth days of August, 1920, argued by counsel, the defendant, United States Shipping Board Emergency Fleet Corporation, being represented by Guy D. Goff, Esq., its general counsel, and by Edward M. Hyzer, Esq., its assistant general counsel, the plaintiff by Frederic D. McKenney, Esq., and Charles E. Hughes, Jr., Esq., of its counsel, suggestions on behalf of the United States of America being orally presented and argued by Abram Fern Myers, Esq., an assistant attorney, Department of Justice, as Amicus Curie, and was submitted to the court, and the court now being sufficiently advised in the premises, is of opinion that insofar as the plaintiff's bill of complaint seeks relief with respect to the matters involved in the award of just compensation as made by the defendant, United States Shipping Board Emergency Fleet Corporation, this court is

without jurisdiction to grant such relief because to such extent the action brought is in effect a suit against the United States of America and by the provisions of the Acts of Congress of June 15, 1917 (40 stats., 182, ch. 29), as amended by the Act of April 22, 1918 (40 Stat., 535 ch. 62), and of November 4, 1918 (40 Stat., 1022, ch. 201), exclusive jurisdiction to hear and determine all such matters is conferred upon the United States Court of Claims to be pursued in the manner provided for by section 24, paragraph 20, and section 145 of the Judicial Code.

The Court is further of opinion that insofar as plaintiff's bill of complaint seeks relief with respect to matters and things involved in, or concerning the provisions of the agreement of May 14, 1918, between the plaintiff and the defendant herein (being Exhibit A of the bill of complaint) and the execution and enforcement of the terms and provisions of bond and mortgage, dated August 2d, 1918, given pursuant thereto, same being Exhibits B and C of the bill of

complaint, this Court is possessed of full jurisdictional power to retain said bill of complaint and to the extent justified by the averments of said bill of complaint and ultimately sustained by the proofs, to grant such measure of the relief prayed as may be justified in law and equity.

Therefore, it is, this third day of September, 1920, adjudged and ordered that defendant's motion to dismiss plaintiff's bill of complaint herein be, and the same is hereby overruled and denied; and

Further, that defendant, United States Shipping Board Emergency Fleet Corporation, be and it is hereby restrained and enjoined pendent lite and until the further order of this Court, from enforcing or attempting to enforce by foreclosure of the lien of the mortgage above referred to, or otherwise the obligation of said bond dated

August 2, 1918, being Exhibit B, of said bill of complaint, 297 provided that said plaintiff give bond with satisfactory surety to be approved by the Court on — days' notice in the sum of twenty-five thousand dollars (\$25,000) conditioned to hold the defendant harmless from any and all damages which wrongfully may be sustained from the granting of this injunction; and provided further, that within sixty (60) days from and after the completion and delivery by plaintiff to defendant of the Pennsylvania Hull No. 17, now under construction at the Gloucester yard of plaintiff, if final satisfactory adjustment of all matters in controversy between the plaintiff and defendant herein then shall not have been made, said plaintiff shall institute in the Court of Claims of the United States its action to fix and recover from the United States the amount of its just compensation for and on account of facilities furnished, services rendered and work done in constructing the thirty-four vessels in said bill of complaint specified.

It is further ordered that defendant, United States Shipping Board Emergency Fleet Corporation, forthwith enter general appearance in this cause and that it answer or otherwise plead herein on or before the fifth day of October next. F. L. Siddons, Justice.

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EXHIBIT "C."

In the Court of Claims of the United States.

General Jurisdiction, No. 15-A.

THE PUSEY AND JONES COMPANY

v.

THE UNITED STATES.

Petition.

To the Honorable the Chief Justice and Judges Composing the Court of Claims of the United States:

(1) Petitioner, The Pusey and Jones Company, is a corporation incorporated and organized under the laws of the State of Delaware, with its principal office in the City of Wilmington, in said State.

The objects and purposes for which it was incorporated and the business in which it has engaged under the terms of its charter of incorporation was and is, among other things, the construction of steamships and water-craft of every kind and description; the manufacture and purchase and sale of engines, boilers and machinery; the manufacture, buying, selling and otherwise dealing in and with paper-making machinery, and other machinery, equipment and appliances incident thereto; the operation of general machine-shops and shipyards for the construction and repairing of all kinds of ships, boats and machinery; and generally to do all and everything incidental to the carrying on of each and every of the objects, purposes and businesses above indicated.

In the pursuit of such objects, purposes and businesses, it has acquired and is possessed of and for many years past has operated shops and shipyards and appurtenant plants for the construction of steel steamships, vessels and tankers at or in the near vicinity of both the city of Wilmington, in the State of Delaware, and the city of Gloucester, in the State of New Jersey.

Petitioner, by virtue of a certain agreement of consolidation and merger, dated December 21, 1917, and in full effect from and at all times since January 24, 1918, is the successor in interest to, and is possessed of and entitled to assert and maintain possession of, all assets and choses in action of every sort and kind of the Pennsylvania Shipbuilding Company and the New Jersey Shipbuilding Company, each of which formerly was likewise a corporation duly incorporated, organized, and operating under the laws of said State of Delaware, and owned and operated the shipyards and plants located at or in the immediate vicinity of the city of Gloucester, State of New Jersey, above referred to, now owned and being operated by petitioner.

Petitioner, in its own corporate right, and as the successor in interest, by virtue of said agreement of consolidation and merger, of each said Pennsylvania Shipbuilding Company and New Jersey Shipbuilding Company, brings this its petition and claim against the United States, for and because of the matters and things hereinafter specified.

(2) By section 3 of the Act of Congress, approved September 7, 1916 (39 Stats., 728, chap. 451), entitled

"to establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States, and for other purposes."

sometimes cited as "Shipping Act, 1916," there was created a board known as and being the United States Shipping Board, composed of seven members or commissioners, appointed by

the President of the United States by and with the advice and consent of the Senate.

By section 5 of said act said board

"with the approval of the President, is (was) authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels; * * *."

By section 11 of said act it was and is provided as follows:

"That the board, if in its judgment such action is necessary to carry out the purposes of this act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. The total capital stock thereof shall not exceed \$50,000,000. The board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: Provided, That

no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessels constructed, purchased, leased, chartered, or transferred under the authority of this act unless the board shall be unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board."

(3) In the exercise of its judgment, and pursuant to the authority and power conferred upon it by said section 11 of the "Shipping Act, 1916," the United States Shipping Board, on or about the 18th day of April, 1917, incorporated or caused to be incorporated under the laws of the District of Columbia a corporation named and known as United States Shipping Board Emergency Fleet Corporation, which corporation hereinafter will be referred to as Fleet Corporation.

Said Fleet Corporation is capitalized at \$50,000,000, all of which, with the exception of the few so-called qualifying shares of its trustees, is owned and held by the United States Shipping Board.

Said Fleet Corporation was duly organized for the purposes of its formation as above provided and since the date of its organization has been carrying on business, its principal executive offices being located in the city of Washington, in the District of Columbia.

(4) By act of Congress entitled "An act making appropriations

to supply urgent deficiencies in appropriations for the military and naval establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917 (40 Stat., 182, ch. 29), as amended by the act of April 22, 1918 (40 Stat., 535, ch. 62), and the act of November 4, 1918 (40 Stat., 1022, ch. 201), it is provided, among other things, as follows, to wit:

"Emergency Shipping Fund.

"1. The President is hereby authorized and empowered, * * *

"(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind, and quantity usually produced or capable of being produced by such person.

"(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material, or take possession, lease, or assume control of, any street railroad, interurban railroad, or part thereof, cars and other equipment necessary to operation.

"(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

"(d) To acquire, construct, establish, or extend any plant, and in pursuance thereof, to purchase, requisition, or otherwise acquire title to or use of land improved or unimproved or interest therein; and to requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

"(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

* * * * *

303 "(g) In pursuance of the foregoing powers, or any of them, to make advance payments or loans of such amounts and upon such terms as the President may deem necessary and proper.

"2. Compliance with all orders issued hereunder shall be obligatory on any persons to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the ex-

cution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities, or qualities of the ships or materials so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material, or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

"3. Whenever the United States shall cancel, modify, suspend, or requisition, any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid 75 per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section 24, paragraph 20, and section 145 of the Judicial Code.

304 "4. The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time:

"Provided, That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

"5. The word 'person' as used herein, shall include any individual, trustee, firm, association, company, corporation, or contractor.

"6. The word 'ship' shall include any boat, vessel, or submarine and the parts thereof.

"7. The word 'material' shall include stores, supplies, and equipment for ships, and everything required for or in connection with the production thereof.

"8. The word 'plant' shall include any factory, workshop, warehouse, engine works; buildings used for manufacture, assembling, construction, or any process; any shipyard, drydock, marine railway, pier, or dockyard, and discharging terminal and any facilities or improvements connected with any of the foregoing descriptions of property.

"9. The words 'United States' shall include all lands and waters subject to the jurisdiction of the United States of America."

(5) Pursuant to the authority so conferred and vested in him by and under the provisions of said act of June 15, 1917, as amended and above set forth, the President of the United States, by his executive order of July 11, 1917, being Executive Order No. 2664, directed

“that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me (him) in said section of said act in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.” *

(6) Acting upon and pursuant to the authority and power so delegated to and vested in it, the Fleet Corporation, by appropriate orders dated August 3, 1917, did requisition all power-driven cargo-carrying and passenger ships above 2,500 tons dead-weight capacity, under construction in each of the hereinbefore mentioned shipyards and the materials, machinery, equipment, outfit, and commitments for materials, machinery, equipment, and outfit necessary for their completion, and did require and direct petitioner and the Pennsylvania Shipbuilding Company and New Jersey Shipbuilding Company severally to complete construction of the ships requisitioned in their respective yards with all practicable despatch, said requisitioning orders, omitting headings and addresses, being in the words and figures following, to wit:

“By virtue of an act of Congress, approved June 15, 1917, entitled ‘An act making appropriations for the military and naval establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,’ and by authority delegated to the United States Shipping

**Executive Order.*

By virtue of authority vested in me in the section entitled “Emergency shipping fund” of an act of Congress entitled “An act making appropriation to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth nineteen hundred and seventeen, and for other purposes,” approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

WOODROW WILSON.

The White House, 11 July, 1917.
(No. 2664.)

Board Emergency Fleet Corporation under executive order of the President, dated July 11, 1917, all power-driven cargo-carrying and passenger ships, above 2,500 tons d. w. capacity, under construction in your yard and certain materials, machinery, equipment, outfit, and commitments for materials, machinery, equipment, outfit necessary for their completion are hereby requisitioned by the United States.

"On behalf of the United States, by virtue of said act and said order, you are hereby required to complete the construction of said requisitioned ships under construction and will prosecute such work with all practicable dispatch.

"The compensation to be paid will be determined hereafter and will include ships, material, and contracts requisitioned.

"You will furnish immediately general plans and detail specifications of the ships requisitioned, and copies of contracts and all supplemental agreements in relation thereto and full particulars as to owner, date of completion, pavements made to date, amounts
307 still due and any other information necessary to a fair and just determination of the obligations of the Emergency Fleet Corporation in taking over these ships and contracts.

"You will report immediately whether any additional contracts are under consideration and their character and extent, and will not enter into any additional contracts or commitments with respect to merchant tonnage without express authority from this corporation. W. L. Capps, General Manager United States Shipping Board Emergency Fleet Corp. Washington, D. C., August 3, 1917."

(7) On said August 3, 1917, petitioner and said Pennsylvania Shipbuilding Company and said New Jersey Shipbuilding Company together had in their respective yards under construction forty-five (45) vessels and certain materials, machinery, equipment and outfit therefor, which fell within the description and purview of above requisitioning orders, said vessels, materials, machinery, equipment, and outfit being distributed among the several yards, and said vessels being of the type and of about the tonnages below set forth, the hull numbers, given for purposes of identification, being the yard and contract numbers of the respective hulls to which they apply, to wit:

Yard.	Type.	Tonnage.	Total.
(a) The Pusey & Jones Co., Wilmington, Del.:			
Hulls 1001 to 1006.....	6-4000 cargo	24,000	
1007 to 1014.....	8-4300 "	34,400	
			58,400
(b) Pennsylvania Shipbuilding Co., Gloucester, New Jersey:			
Hulls 1 to 6	6-7000 tanker	42,000	
13 and 14	2-7500 cargo	15,000	
7 to 12 and 15 to 19....	11-12500 "	137,500	
			194,500

(c) New Jersey Shipbuilding Co.,

Gloucester, N. J.:

Hulls 201 to 212	12-5000	"	60,000	
				<u>312,900</u>

308 Of such vessels, so requisitioned or commandeered, the Cunard Steamship Company, Limited, a corporation under the laws of the United Kingdom of Great Britain and Ireland, was the contracting owner of seventeen (17); the Bulk Oil Transports, Inc., a corporation, of ten (10); Mansk Steamship Corporation, a corporation, of eight (8); Continental Transportation & Oil Company, a corporation, of one (1), and Christoffer Hannevig, a citizen of Norway, president and principal holder of the capital stock of both petitioner and each of the other two companies above named, now merged and consolidated into and with petitioner, was the contracting owner of the remaining nine (9).

(8) Subsequent to said August 3, 1917, the Fleet Corporation canceled then existing orders for the construction of eleven (11) of said forty-five (45) vessels, to wit, Pennsylvania Shipbuilding Company's hulls numbered 13 and 14 and New Jersey Shipbuilding Company's hulls numbered 201 and 212, both inclusive, aggregating 60,000 deadweight tons, leaving the approximate deadweight tonnage constructed and to be constructed as follows:

Yard.	Type.		Tonnage.	Total.
(a) The Pusey & Jones Co., Wilmington, Del.:				
Hulls 1001 to 1006.....	6-1000	cargo	24,000	
1007 to 1014.....	8-1300	"	34,400	
			<hr/>	58,400
(b) Pennsylvania Shipbuilding Co., Gloucester, New Jersey:				
Hulls 1 to 6	6-7000	tanker	12,000	
7 to 12, 15 to 19.....	11-12500	cargo	137,500	
			<hr/>	179,500
(c) New Jersey Shipbuilding Co., Gloucester, N. J.:				
Hulls 201 to 203	3-5000	"	15,000	
			<hr/>	15,000
				<hr/>
				252,900

309 (9) Of the remaining thirty-four vessels so requisitioned or commandeered, the construction of which was continued and completed under the direction and supervision of the Fleet Corporation upon its solemn assurance that it would award and make just compensation in all respects therefor as in and by the laws of the United States authorized, required and provided, each and every thereof has been completed and equipped by petitioner in all

respects in strict accord with the plans, directions, orders, and requirements of the Fleet Corporation, and each and every thereof, by authority and direction of the proper official of the Fleet Corporation, has been delivered to and accepted by the United States, acting to such end by and through the United States Shipping Board; the last one of said vessels, being the requisitioned or commandeered vessel known as the William Penn, and also as Pennsylvania Hull No. 17, was delivered and accepted by or on behalf of the United States Shipping Board and of the United States on the 29th day of September, 1920, and since delivery and acceptance each and every of said ships and vessels have been operated, managed, or disposed of for the use and benefit of the United States by said United States Shipping Board directly or indirectly by it through the Fleet Corporation, as the case may be.

But notwithstanding the express prohibition of Article V of the Amendments to the Constitution of the United States that

"No person shall * * * be deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation."

and notwithstanding the express declaration and guarantee contained in paragraph 3 of the Emergency Shipping Fund provision of the Urgent Deficiencies Appropriations Act approved June 15, 1917, as amended (*supra*), no compensation whatever, either just or otherwise, either determined by the President or by the Fleet Corporation, the agency lawfully possessed of and exercising all power and authority vested in the President by said paragraph 3 of said act, nor anything on account of or referable to any such just compensation, has been made or paid to this petitioner or to any other person or corporation for or on petitioner's account, and this notwithstanding petitioner has made repeated demands therefor.

(10) Under date of May 14, 1918, petitioner entered into an agreement in writing with the Fleet Corporation, wherein was recited, among other things, the consolidation and merger of said The Pusey and Jones Company, The Pennsylvania Shipbuilding Company, and New Jersey Shipbuilding Company into a single consolidated corporation called "The Pusey & Jones Company," possessed of all rights, privileges, powers, franchises, and of all property, real, personal and mixed, of each of said three corporations; that said three corporations on and after August 3, 1917, were engaged in the work of building commandeered ships at their plants at Gloucester, New Jersey, and Wilmington, Delaware; that said consolidated corporation, The Pusey & Jones Company, was the owner in fee simple, free of all liens and encumbrances, with minor exceptions therein set forth, of certain tracts of land particularly therein described, upon which said shipbuilding yards and plants were located, together with the improvements and personal property located thereon; that said The Pusey & Jones Company since January 24, 1918, had been and then was engaged in the work of building commandeered ships at said plants, and, in order to expedite such work,

311 desired to secure a loan of money from said Fleet Corporation, which loan, in a sum not to exceed \$5,000,000, said Fleet Corporation was willing to make, and it was therein and thereby agreed that said Fleet Corporation should advance to The Pusey & Jones Company not to exceed \$5,000,000 upon certain terms and conditions, among others, that such advances should be secured by a bond and mortgage to be and constitute a lien upon all property, real and personal, then owned or thereafter acquired by petitioner during the life of said agreement and should be repaid (a) by the "Fleet Corporation" withholding and crediting as payment all or so much as might be necessary of the amount to be awarded to plaintiff as just compensation for the construction of said vessels, with (b) other provisions for the repayment of any balances which might remain due from petitioner after such application; as all of which will the more fully and in greater detail appear from a copy of said agreement attached hereto marked "Exhibit A" and made a part of this petition as though set forth herein.

(11) Pursuant to said agreement of May 14, 1918, and in accord with its terms, the Fleet Corporation did advance to petitioner for the purposes aforesaid the sum of \$5,000,000, and on or about August 2, 1918, petitioner executed and delivered to the Fleet Corporation its bond in the sum of \$5,000,000 and likewise executed and delivered to said Fleet Corporation, which duly recorded the same, a blanket mortgage constituting a lien upon all of petitioner's property, real and personal, then or thereafter acquired, until said indebtedness should be paid in the manner provided in said agreement and reiterated in said bond; all of which will more fully and in greater particularity and detail appear upon inspection of the copy of said bond and mortgage hereto annexed, marked respectively "Exhibit B" and "Exhibit C," and made part of this petition as if set forth at large herein.

312 (12) By resolution adopted at a session of the board of trustees of the Fleet Corporation, on or about the 13th day of March, 1920, said Fleet Corporation did award to petitioner as its just compensation for the construction of said thirty-four (34) vessels, and on account of the eleven (11) vessels the construction of which, as above stated, had been canceled, the sum of \$7,191,975, which amount was and is the sum over and above the actual costs of constructing the vessels which have been constructed and over and above the costs and outlays actually incurred in preparing to construct the vessels which were ordered to be canceled.

Said resolution evidencing such award in favor of petitioner, in its entirety, reads as follows, to wit:

"Resolution of the Board of Trustees of the United States Shipping Board Emergency Fleet Corporation.

"Whereas, pursuant to the Emergency Shipping Fund provisions of the Urgent Deficiencies Appropriation Act approved June 15, 1917 (40 Stat., 182), and executive order of the President dated July 11, 1917 (No. 2664), the United States Shipping Board Emer-

gency Fleet Corporation on or about August 3, 1917, issued its requisitioning orders directing the shipbuilding companies now comprised in the Pusey & Jones Company, a consolidated corporation organized and existing under the laws of the State of Delaware, to discontinue ship construction for private account in their respective shipyards and to continue such work of construction for account of the United States Shipping Board Emergency Fleet Corporation, upon such terms of just compensation as should thereafter be determined by the corporation pursuant to paragraph 3 of said Emergency Shipping Fund provision; and

313 "Whereas, the companies embraced within the purview of the said requisition orders were the Pennsylvania Shipbuilding Company, the New Jersey Shipbuilding Company, and the Pusey & Jones Company, of Wilmington, Delaware, which said companies were at the time committed to a ship construction program of forty-five (45) vessels distributed to the several yards and of the type and tonnage as follows, to wit:

Yard.	Type.	Tonnage.	Total.
Pennsylvania (19):			
Hulls 1 to 6	6-7000 tanker	42,000	
13 and 14	2-7500 cargo	15,000	
7 to 12 and 15 to 19	11-12500 "	137,500	
		—————	194,500
New Jersey (12):			
Hulls 201 to 212	12-5000 "	.....	60,000
Wilmington (14):			
Hulls 1001 to 1006	6-4000 "	24,000	
1007 to 1014	8-4300 "	34,400	
		—————	58,000
			312,900

"And whereas, the United States Shipping Board Emergency Fleet Corporation subsequently agreed with the Pennsylvania Shipbuilding Company, to wit, in January, 1918, to pay the said company as the just compensation for the construction of the vessels described as Hulls Nos. 15 to 19, both inclusive, the actual cost thereof, together with a profit to the shipyard of \$204,000 for each vessel with the proviso that in the event that the actual cost of each vessel should be less than \$2,040,000.00, said corporation and said shipbuilding company should share equally in the saving; and

"Whereas, the United States Shipping Board Emergency Fleet Corporation also agreed with the New Jersey Shipbuilding Company on or about December 26, 1917, to pay the said shipbuilding company as the just compensation for the construction of the vessels described as Hulls Nos. 201 to 212, both inclusive, the actual cost thereof together with a profit of \$17.50 per deadweight ton, with the proviso that in the event that the cost should be less than \$175.00 per deadweight ton, the corporation and said shipbuilding company should share equally in the saving; and

"Whereas, the above-mentioned ship construction program was subsequently modified by the United States Shipping Board Emergency Fleet Corporation by the cancellation of the construction of certain of said vessels, to wit, Pennsylvania Hulls Nos. 13 and 14 and New Jersey Hulls Nos. 203 to 212, both inclusive, being 11 vessels of an aggregate deadweight tonnage of 60,000 tons, leaving the tonnage actually constructed or to be constructed by The Pusey & Jones Company as follows:

Yard.	Type.	Tonnage.	Total.
Pennsylvania:			
Hulls 1 to 6	6-7000 tanker	42,000	
7 to 12 and 15 to 19	11-12500 cargo	137,500	
		<hr/>	179,500
New Jersey:			
Hulls 201 to 203	3-5000 "	15,000	15,000
Wilmington:			
Hulls 1001 to 1006	6-4000 "	24,000	
1007 to 1014	8-4300 "	34,400	
		<hr/>	58,400
			<hr/>
			252,900

"And whereas, the United States Shipping Board Emergency Fleet Corporation has since August 3, 1917, advanced to the Pusey & Jones Company for plant construction and other purposes large sums of money, exceeding \$6,000,000.00, secured or partly secured by mortgage on properties of said company, and has likewise since August 3, 1917, currently supplied to the Pusey & Jones Company (or its predecessor companies), the funds requisite to carry on said ship construction and now desires to fix and award the just compensation properly to be allowed to the Pusey & Jones Company for the work of constructing vessels for the United States Shipping Board Emergency Fleet Corporation as aforesaid, including therein proper allowances for the cancellation of certain of said construction and for amortization of the investment in, and depreciation of, the plants and facilities and appurtenances thereto employed in said construction, including the elements of amortization and depreciation allocable to the cost of vessels in the Pennsylvania and New Jersey shipyards as to the compensation for which the Emergency Fleet Corporation has heretofore entered into agreements with the Pennsylvania Shipbuilding Company and the New Jersey Shipbuilding Company, respectively; and

"Whereas, prior to, on and at all times subsequently to August 3, 1917, Christoffer Hannevig, a citizen of Norway, now a resident of New York City, New York, has owned and controlled the companies engaged in the work of ship construction as aforesaid, including the present Pusey & Jones Company, and also prior to August 3, 1917, controlled, either personally or through various corporations, the contracts for the construction of the ships to which said shipbuilding companies were committed, and under, in connection with, or

through the sale, transfer, assignment, or novation of certain of said contracts, the said Hannevig prior to August 3, 1917, either personally or through companies controlled by him, collected various sums of money aggregating \$5,627,000.00, which sums have heretofore been fully reimbursed by the United States Shipping Board Emergency Fleet Corporation to the persons, firms, or corporations in interest as of August 3, 1917; and

"Whereas, it now appears to the trustees of this corporation that of the said moneys so collected by Hannevig the sum of \$3,776,737.00 is properly to be regarded as applicable to the just compensation which the Pusey & Jones Company is entitled to receive for work of ship construction, and was, in the opinion of the trustees of this corporation, wrongfully withheld or diverted by the said Hannevig from the assets of the Pusey & Jones Company (or its predecessor companies) to his own use; and

"Whereas, the Pusey & Jones Company has heretofore constructed and delivered to the Fleet Corporation, 26 of the vessels embraced in the present construction program, namely, Pennsylvania Hulls Nos. 1 to 12, inclusive, New Jersey Hulls Nos. 201 to 203, inclusive, and Wilmington Hulls Nos. 1001 to 1011, both inclusive, and has still to construct and deliver 8 of said vessels, namely, Pennsylvania Hulls 15 to 19, both inclusive, and Wilmington Hulls Nos. 1012 to 1014, both inclusive; and

"Whereas, the United States Shipping Board Emergency Fleet Corporation has caused careful examination and investigation to be made, extending over a long period of time, with respect to the rights of the Pusey & Jones Company in the premises and with respect to the obligation of the Emergency Fleet Corporation to award just compensation to said company and has reached a conclusion and determination;

"Now, therefore, be it resolved, That an award of just compensation be, and the same is hereby made as follows:

"1. The United States Shipping Board Emergency Fleet Corporation is obligated to pay the actual cost of the work of ship construction performed, or to be performed, by the said Pusey & Jones Company.

"2. The United States Shipping Board Emergency Fleet Corporation hereby allows and awards to the Pusey & Jones Company as the just compensation for and in connection with the work of constructing vessels for account of said corporation the following:

317 "(a) On vessels covered by Emergency Fleet Corporation agreements as aforesaid:

3-5,000 d. w. t. vessels (N. J. Yd.) 15,000 tons \$17.50	
per ton.....	\$262,500.00
5-12,500 d. w. t. vessels (Pa. Yd.) 62,500 tons \$16.32	
per ton.....	1,030,000.00

On vessels not covered by Emergency Fleet Corporation agreements:

6-4,300 d. w. t. vessels (Wil. Yd.) 34,000 tons \$16.00 per ton.....	550,400.00
6-4,000 d. w. t. vessels (Pa. Yd.) 24,000 tons \$16.00 per ton.....	384,000.00
6-7,000 d. w. t. vessels (Pa. Yd.) 42,000 tons \$16.00 per ton.....	672,000.00
6-12,500 d. w. t. vessels (Pa. Yd.) 75,000 tons, \$16.00 per ton.....	1,200,000.00
(b) As amortization of investment in plant facilities and appurtenances thereto, including therein a factor, allocable to the plant facilities and appurtenances used in the construction of vessels in the Pennsylvania and New Jersey shipyards as to which the Emergency Fleet Corporation has heretofore entered into agreements with the Pusey & Jones Company (or its predecessors) as aforesaid.....	1,500,000.00
(c) As depreciation of plant and appurtenances, including therein a factor allocable to plant and appurtenances used in the construction of vessels in the Pennsylvania and New Jersey shipyards as to which the Emergency Fleet Corporation has heretofore entered into agreements with the Pusey & Jones Company (or its predecessors) as aforesaid.....	1,375,000.00
(d) As cancellation fees on 11 vessels (6,000 d. w. tons) construction of which has been heretofore canceled by the Emergency Fleet Corporation	231,075.00
	<hr/> \$7,194,975.00

"3. From said \$7,194,975.00 there shall be deducted, and is hereby deducted, the sum of \$3,776,737.00, which last-mentioned sum represents amounts which should have been applied as a part of the Pusey & Jones Company's compensation for the construction of certain of the above-mentioned vessels, but which amounts were withdrawn or withheld by Christoffer Hannevig from the assets of said company as aforesaid, leaving as the net balance to be allowed to the Pusey & Jones Company for the entire work of construction, both completed and to be completed, the sum of \$3,418,238.00.

"4. Said balance of \$3,418,238.00, which includes the per 318 ton fees already earned and still to be earned on account of ship construction as hereinbefore provided, shall, as the same has or shall accrue, be applied in the reduction of the indebtedness of the Pusey & Jones Company to the United States Shipping Board Emergency Fleet Corporation on account of advances heretofore made by said corporation to the Pusey & Jones Company (or its

predecessors), for plant construction and other purposes; provided, however, that in the event the Pusey & Jones Company declines to accept the award herein and hereby made, only 75 percentum of said award shall be available to the Pusey & Jones Company, in which event, 75 per cent. of the total award of just compensation of \$7,194,975.00, or \$5,396,231.25, less the amount of \$3,776,737.00 withheld or withdrawn by said Hannevig as aforesaid from the assets of the company, or a net balance of \$1,619,494.25, is to be applied as aforesaid in the reduction of the indebtedness of the Pusey & Jones Company to the United States Shipping Board Emergency Fleet Corporation and the said Pusey & Jones Company shall be remitted as to its claims for further compensation to the remedy provided in paragraph 3 of the Emergency Shipping Fund Provisions of June 15, 1917 (40 Stat., 182).

"Resolved further, That the Secretary of the corporation be, and he is hereby, instructed to communicate a copy of this resolution embodying the aforesaid award, certified under the seal of this corporation, to the Pusey & Jones Company."

(13) Petitioner promptly expressed itself to the Fleet Corporation as dissatisfied with the sum of \$7,149,975, so awarded to it as just compensation by and under the terms of said resolution of March 13, 1920, above recited, and expressly denied both the truth of the assumptions upon which the proposed deduction of \$3,776,737 from said sum of \$7,194,975 was based, and the existence either of legal liability on its part to respond with respect thereto or of legal power or authority on part of the Fleet Corporation, whether after 319 or without hearing, to assess any such supposed liability in the sum specified or any other sum against it; but for the purpose of obtaining prompt adjustment of the accounts between petitioner and the Fleet Corporation growing out of the completion by the former under the orders, directions and supervision of the latter of the thirty-four (34) vessels above referred to and specified, and the cancellation by the latter of the contracts for construction of eleven (11) vessels, which contracts, after work had been performed and materials had been purchased and delivered with respect thereto, had been canceled by said Fleet Corporation, and particularly for the purpose of satisfying its said bond of \$5,000,000 and of obtaining the release of its plants, properties, and appurtenances from the lien of the blanket mortgage given and duly recorded to secure payment thereof, petitioner expressed itself as willing to accept the sum of \$7,194,975, allowed and awarded to it by said Fleet Corporation as just compensation, provided said Fleet Corporation promptly would apply so much thereof as might be necessary to the satisfaction of said bond for \$5,000,000 and to the discharge of the lien of said blanket mortgage, but this the Fleet Corporation, notwithstanding its express agreement set forth in said agreement of May 14, 1918, copy of which is filed herewith marked Exhibit A, refused to do, unless and until petitioner should first give assent to the arbitrary, unjust, and wholly illegal attempt on its part to deduct from such total amount so awarded as just compensation for and in connection with the work of constructing said vessels said sum of

\$3,776,737, which sum was said to represent "amounts which should have been applied as a part of The Pusey & Jones Company's compensation for the construction of certain of the above-mentioned vessels, but which amounts were withdrawn or withheld by Christoffer Hannevig from the assets of said company," which assent petitioner has refused and still refuses to give.

(14) Said sum of \$3,776,737 was not, as recited in said resolution, nor was any thereof, wrongfully or otherwise withheld or diverted by said Hannevig from the assets of the petitioner or either of its predecessor companies to his own use or otherwise; said sum never was, nor was any thereof, part of the assets of petitioner or of either of its predecessor companies, nor was said sum or any thereof collected by said Hannevig as any part of the assets of petitioner or of either of its predecessor companies, nor had petitioner or either of its predecessor companies any right, title, or interest therein, but, upon information and belief, the same was at all times the property of said Hannevig, or of those for whom he acted as agent or broker, and was received by him, either for his own account or as such agent or broker, in consideration of the assignment by him to the Cunard Steamship Company, Limited, and Continental Transportation and Oil Company of the contracts for the construction of eighteen (18) of the above-mentioned ships, to wit, Pennsylvania Shipbuilding Company's Hulls Nos. 1 to 10, both inclusive, and The Pusey & Jones Company's Hulls Nos. 1001 to 1008, both inclusive.

Further, neither said sum of \$3,776,737 nor any part thereof was at any time paid to said Hannevig nor to anyone acting in, for, or on said Hannevig's behalf, either by said Fleet Corporation or under or by its direction or authority, nor has said sum or any part thereof been paid by said Fleet Corporation or under or by its direction or authority to this petitioner or to either one of its predecessor companies or to anyone acting in, for, or on its or their behalf, and if, as stated in said resolution of the Fleet Corporation, above set forth in full, said sum of \$3,776,737, or any part thereof, has been "fully reimbursed by the United States Shipping Board Emergency Fleet Corporation to the persons, firms, or corporations in interest as of August 3, 1917," such so-called reimbursement was made without the request or assent or even knowledge of this petitioner, and if in fact made at all was made to those with whom petitioner was not in privity and to "persons, firms, or corporations" to whom petitioner was not in anywise or any manner indebted, either on account of or in connection with the contracts for the construction of the ships or vessels in said resolution and award specified, or on any other account whatsoever.

Petitioner is informed and believes and therefore avers that said Fleet Corporation and its Board of Trustees was and is without lawful power of any sort or kind to inquire into or to ascribe to the fact of the ownership by said Christoffer Hannevig of any or all of the issued and outstanding shares of capital stock of petitioner any such consequences as said Fleet Corporation by its said resolution awarding just compensation has ascribed or attributed thereto, and also is without lawful power of any sort or kind to make any de-

duction from any amount of just compensation which was or may be awarded to petitioner for and on account of work done and services rendered by it subsequent to August 3, 1917, in connection with the construction of the vessels above referred to, either because of things done or agreements made or profits derived by said Hannevig individually, directly or indirectly, with which things done, or contracts or agreements made, or profits derived petitioner had no connection and from which it at no time derived any benefit or advantage whatsoever.

Further, also upon information and belief, petitioner avers that each and every of the things done and contracts or agree-
322 ments made or profits received and enjoyed by said Christopher Hannevig, if any such there were, had been fully and completely done, made or received and enjoyed by said Christopher Hannevig long prior to August 3, 1917, on which date said Fleet Corporation first became concerned in the affairs of this petitioner or in the ships so requisitioned by it, as above set forth.

So much of said resolution of the Fleet Corporation as proposes to make any deduction from the total amount of just compensation allowed and awarded to petitioner for and on account of its work done and services rendered in connection with the construction of the vessels aforesaid is without legal force or effect; otherwise its direct and necessary consequence would be to take the private property of this petitioner for the general benefit and use of the public without in truth making just compensation therefor, and also to deprive this plaintiff of its property without due process of law, thus entailing consequences expressly forbidden and prohibited by the provisions of Amendment V of the Constitution of the United States.

(15) On information and belief petitioner states for the information of the court that prior to said August 3, 1917, the then contracts for Pennsylvania Shipbuilding Company's hulls numbered 4, 5, 6, 9, and 10 and for The Pusey & Jones Company's hulls, numbered 1005, 1006, 1007, and 1008, being nine (9) contracts in all, had been made by and between one or other of said shipbuilding companies and either the above-mentioned Bulk Oil Transports, Inc., or said Hannevig personally; that in the cases where such contracts had been made with said Bulk Oil Transports, Inc., said corporation subsequently assigned the same to said Hannevig, either for his own account or
323 the account of others for whom he was acting either as agent or broker; said Hannevig thereafter assigned to Cunard Steamship Company, Limited, each and every of said contracts. Contracts for the remaining nine (9) of said ships, to wit, Pennsylvania Shipbuilding Company's hulls numbered 1, 2, 3, 7, and 8, and The Pusey & Jones Company's hulls numbered 1001, 1002, 1003, and 1004, were bought by said Hannevig from certain citizens of Norway at an aggregate profit to said Norwegian citizens of \$1,850,263 over and above the contract prices, and subsequently said Hannevig assigned same to Cunard Steamship Company, Limited, with the exception of the contract for Pennsylvania Steamship

company's hull No. 2, which contract he assigned to Continental Transportation & Oil Company. As consideration for the assignment of said eighteen (18) vessels by said Hannevig, the Cunard Steamship Company, Limited, and said Continental Transportation & Oil Company together paid to said Hannevig an aggregate sum of \$5,627,000, of which \$1,850,263 represented the profits of the Norwegian owners above referred to of nine of said vessels and \$567,000 represented the profits of Thor O. Hannevig Company, a Norwegian corporation, the then actual owner of contracts covering The Pusey & Jones Company's hulls numbered 1005, 1006, 1007, and 1008. Said sums of \$1,850,263 and \$567,000, aggregating \$2,417,263 of said sum of \$5,627,000, were collected and paid to said Hannevig as agent for the owners above named of the thirteen (13) vessels specified. The sum of \$3,209,737 remaining out of said sum of \$5,627,000 constituted the personal profits of said Hannevig as owner and vendor of the contracts covering the remaining five (5) vessels above specified. No part of said sums or any of them ever passed to or became a part of the assets of petitioner or of either of its predecessor companies, nor had nor has the petitioner or either of its predecessor companies any right, title, or interest therein or claim to any thereof.

(16) With respect to each of the above-mentioned seventeen (17) ships which were under construction and were requisitioned by the Fleet Corporation on said 3d day of August, 1917, of which Cunard Steamship Company, Limited, by virtue of the assignments aforesaid, was the then owner, with the view and for the purpose of providing and making just compensation to said Cunard Steamship Company, Limited, for each thereof, as required in and by said Urgent Deficiencies Appropriations Act of June 15, 1917, as amended, and the executive order of July 11, 1917, said Fleet Corporation, as party of the first part, Cunard Steamship Company, Limited, as party of the second part, and Pennsylvania Shipbuilding Company or petitioner, The Pusey & Jones Company, as party of the third part, on or about the 28th day of January, 1918, entered into seventeen contracts in writing, one of such contracts applying to each of said seventeen (17) ships. Of such seventeen contracts in writing, so made and entered into, nine (9) thereof, in which Pennsylvania Shipbuilding Company was named as party of the third part, were and are identical in all terms and provisions, except the names of "original purchaser," dates, hull or contract numbers, and the amounts stated to have been paid by and provided to be paid to the contracting owner, and each thereof, in its terms and with the exceptions noted conforms in every respect with the copy of contract covering Pennsylvania Shipbuilding Company's hull No. 1, hereto annexed, marked "Exhibit D."

The remaining eight contracts in writing so entered into and in which the petitioner is named as party of the third part, with like exceptions, were and are identical in terms and provisions and in all respects conform to the copy of the contract

covering The Pusey & Jones Company's Hull No. 1001, hereto annexed, marked "Exhibit E."

Each of said forms of contracts, so marked Exhibits "D" and "E," annexed hereto and filed herewith are made parts of this petition for every and all purposes as fully and completely as though each of said seventeen contracts were set forth at large herein, and petitioner will produce and tender for inspection at any hearing hereof the original of each and every of said seventeen contracts if same shall be desired or called for.

(17) Each of said seventeen (17) contracts of January 28, 1918, in which the United States Shipping Board Emergency Fleet Corporation is named as party of the first part and as such signed and executed the same, recites that under separate contracts, applicable to the several transactions respectively, the Cunard Steamship Company, Limited, had become the owner of the interest of the "original purchaser" and of the successive or intermediate assignees in each of said seventeen (17) vessels and of the contracts with the particular shipbuilding company having the vessels under construction, that said Cunard Steamship Company, Limited, in each instance had paid to the then owner of the contract a specified sum of money therefor, the sums so paid and specified in such connection being as follows, to wit:

Pusey & Jones contract No.	1001	\$288,000.00
" " " " "	1002	248,000.00
" " " " "	1003	167,000.00
" " " " "	1004	147,000.00
" " " " "	1005	196,000.00
" " " " "	1006	196,000.00
" " " " "	1007	204,400.00
" " " " "	1008	204,400.00

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Pennsylvania Shipbuilding Contract No.	1	987,000.00
" " " " "	3	586,000.00
" " " " "	4	388,000.00
" " " " "	5	282,000.00
" " " " "	6	563,000.00
" " " " "	7	750,000.00
" " " " "	8	593,750.00
" " " " "	9	812,500.00
" " " " "	10	261,250.00

Said sums, totaling the sum of \$6,874,300, in each and every instance covered and included the progress payments already paid or then accrued due to be paid to the appropriate shipbuilding company under the terms of the several construction contracts purchased by the Cunard Steamship Company, Limited, as well as an added amount which represented the then market value of the particular vessel in its forward but uncompleted position. In such purchases by Cunard Steamship Company, Limited, from the "Original Pur-

chaser" or subsequent and intermediate assignees, said Fleet Corporation had no part or place and made no payment of any sort or kind to said "Original Purchaser" or to any of said subsequent or intermediate assignees, and particularly made no payment of any sort or kind, nor any contribution whatever, to said Christoffer Hannevig, either on his personal account as "Original Purchaser" or as an intermediate assignee, or as an agent or broker for any such original purchaser or intermediate assignee.

Each and every of said contracts of January 28, 1918, also recites the requisitioning by the Fleet Corporation of each of said seventeen (17) vessels and the direction by said Fleet Corporation to petitioner or to said Pennsylvania Shipbuilding Company to complete the construction of same; that the Urgent Deficiency Act (being the act of June 15, 1917, hereinbefore referred to) provides that just compensation shall be paid to the parties from whom ships were so requisitioned; that said Fleet Corporation and the shipbuilding company concerned, now petitioner herein, had "agreed on the just compensation to be paid for the completion of (each of) said ship" (s); that Cunard Steamship Company, Limited, had presented in each instance its claim for compensation, in varying sums, "for moneys paid on account for the foregoing (specified) ship, in accordance with the provisions of the contract (therefor), and also for certain expenses connected with the construction of said ship and the acquisition of the contract therefor, which sum includes interest to December 31, 1917;" that the "Fleet Corporation" and said "Cunard Line" are desirous of fixing the amount of compensation to be paid to the latter for "all its right, title, and interest in and to the said ship and the materials therefor," and that said Fleet Corporation, said Cunard Line, and the shipbuilding company named in the particular contract were desirous of procuring releases applicable in the premises, to which end the "Cunard Line" represented and warranted that it was "the sole owner of the contract with the shipbuilding company, as described in the preamble, and that no other person, firm or corporation had at the time of such requisitioning any title thereto or had or has any lien by way of mortgage or otherwise upon either the ship described in said contract, the materials therefor, or in the contract itself * * *"; that the said contract is a valid one; that the Cunard Line has paid the original purchaser or former owner or owners in full therefor; and the shipbuilding company likewise represented and warranted "that no other person, firm, or corporation other than the (said) shipbuilding company and the Cunard Line 328 has any lien" upon said ship or the materials therefor.

Said contracts also recite that Cunard Line made claim in accordance with the provisions of said Urgent Deficiency Act "for compensation for all damages arising out of the said requisition orders, in so far as they affect the ship, the materials therefor, and the said contract" in a sum stated, varying in the case of each vessel; that the Fleet Corporation, in accordance with the provisions of said Urgent Deficiency Act "and the executive order of July 11, 1917"

(supra), had determined "that the just compensation to be paid to the Cunard Line for the satisfaction of the said claim" was the sum or amount particularly specified in clause II of each of said seventeen (17) contracts, and thereafter contains the following several and mutual releases, to wit:

"The Cunard Line releases the shipbuilding company from all claims arising in any way out of the contract hereabove referred to and specifically waives the delivery of the ship contracted for under the contract, either during the present war or thereafter, anything in the said contract to the contrary notwithstanding.

"The shipbuilding company hereby releases the United States, the Fleet Corporation and the Cunard Line and each of them from any and all claims arising out of the contract hereinabove referred to and specifically waives its rights, if any, to deliver to the Cunard Line or to any other person the ship contracted for or any other ship under said contract, either during the present war or thereafter, but nothing herein contained shall relieve the shipbuilding company from its obligation to deliver the said ship to the United States or relieve the Fleet Corporation from its obligation to the shipbuilding company to pay the compensation heretofore agreed to be paid by the Fleet Corporation.

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VI.

"The Cunard Line hereby releases the United States and the United States Shipping Board Emergency Fleet Corporation and each of them from all liability with respect to said ship materials and contract arising out of the said requisition order of August 3, 1917, and acknowledges receipt in full of the claim hereinabove referred to."

All of which will the more fully and in greater detail appear upon inspection of either of said exhibits, marked "D" or "E," which have been hereto attached and made a part of this bill of complaint as aforesaid.

Notwithstanding the express provisions of each of said seventeen (17) contracts in writing and of the particular agreements between the Fleet Corporation and the petitioner or its predecessor in interest, Pennsylvania Shipbuilding Company, by which the Fleet Corporation acknowledged its obligation and expressly agreed to make just compensation for all work done by it in completing said several vessels, and the further fact that said Fleet Corporation, by its board of trustees, as above stated, formally resolved that over and above "the actual cost of the work of ship construction performed, or to be performed, by the said Pusey & Jones Company" there should be and was allowed and awarded "to The Pusey & Jones Company as the just compensation for and in connection with the work of constructing vessels for account of said (United States Shipping Board Emergency Fleet) corporation" the total sum of \$7,149,975, as heretofore and with greater particularity stated, said Fleet Corporation, arbitrarily and in wanton disregard of petitioner's just rights and the express requirements of said Amendment V of

the Constitution of the United States and of the applicable provisions of existing statutes and executive orders persists in its announced intention to deduct from the sum of \$7,194,975, 330 allowed and awarded to plaintiff as its "just compensation," the sum of \$3,776,737, and with the deliberate purpose and view of compelling petitioner to submit to such unlawful, unwarranted, and unconscionable deduction persists in its before-mentioned refusal either to pay over to petitioner or to apply in reduction of the above-mentioned bond any part of said sum of \$7,194,975 or to release pro tanto the properties of petitioner from the lien of the mortgage given to secure the same.

(18) Because of the requisitioning by the Fleet Corporation of the vessels under construction in the shipyards and plants of petitioner located at Wilmington, Delaware, and in the vicinity of Gloucester City, New Jersey, they being all of the shipyards and plants belonging to petitioner, and because of the requirement by said Fleet Corporation that petitioner should proceed with all dispatch to complete for account of the Fleet Corporation and of the United States the program of ship construction above referred to, petitioner, since the 3d day of August, 1917, has been prevented from prosecuting its business of ship construction for private account, and, with the exception of the construction of certain boats of small tonnage for the United States Navy and the manufacture of certain paper-making machinery which has occurred at its Wilmington yard and plant, petitioner has been unable to either secure or turn out work other than said commandeered ships.

Since said 3d day of August, 1917, to now, a period of more than three (3) years, neither said United States Shipping Board Emergency Fleet Corporation, nor the United States Shipping Board, nor the United States themselves, nor anyone acting for or on behalf of any thereof, has paid petitioner a single dollar by way of profit or compensation for the use of its shipyards, plants, and organization 331 or for the meritorious and admittedly valuable services rendered by it, with the result that petitioner's credit has become seriously impaired, its office staff and labor forces from necessity have been disrupted and have sought employment elsewhere, and its yards, buildings, ways, and machinery have fallen into disrepair and are rapidly deteriorating for lack of use, all because of the inability of petitioner under the circumstances to secure contracts with private contractors for work to be done in said yards and buildings, and upon and with said ways and machinery.

(19) To relieve in some measure the financial pressure and strain to which it had been and still is subjected by the arbitrary and illegal action on part of said Fleet Corporation in withholding payment of all and every part of the amount due and formally awarded to it as aforesaid, petitioner sought to make sale of either one or both of its shipbuilding yards and plants, and to that end on two separate occasions entered into agreements with willing and capable purchasers for the sale of its shipyard and plant in the vicinity of Gloucester City, New Jersey, each time at a price of less than one-half of the amount of cash actually invested by petitioner therein,

but as in each case the proposed sale was necessarily conditioned upon action by the Fleet Corporation which would clear the title to said property from the existing lien of the blanket mortgage above referred to, and as such action was not forthcoming and said Fleet Corporation persistently refused to make appropriate application of any part of its said award of "just compensation" or in anywise or manner whatsoever to release or lighten the lien of the mortgage aforesaid on all or any of the property and corporate assets of petitioner, said agreements of sale could not be consummated, to petitioner's great detriment and actual financial loss.

332 (20) Because of such wrongful actions, and others not necessary to be enumerated, on part of said Fleet Corporation and because of inability on part of petitioner either to make sale or economic use of its yards and plants, and because of threats on part of said Fleet Corporation to apply for a receiver of the assets of petitioner and to foreclose the lien of the blanket mortgage above referred to, and because petitioner conceived that it was entitled under the plain wording of said agreement of May 14, 1918, between petitioner and said Fleet Corporation and under said award of \$7,194,975 just compensation, to have canceled its said bond for \$5,000,000 and to have released of record the blanket mortgage above referred to, petitioner, on or about the 12th day of August, A. D. 1920, filed its bill of complaint in the Supreme Court of the District of Columbia, same being docketed therein as Equity, No. 38163, praying, among other things, that the United States Shipping Board Emergency Fleet Corporation be restrained and permanently enjoined from deducting or threatening or attempting to deduct from the sum of \$7,194,975, allowed and awarded to The Pusey & Jones Company as just compensation for its work and services rendered, as above set forth, the sum of \$3,776,737 or any part thereof; also that said Fleet Corporation be required to apply in satisfaction of petitioner's debt, evidenced by its said bond for \$5,000,000 and its mortgage given to secure the same, all or so much of said sum of \$7,194,975, so allowed and awarded, as might be required to fully satisfy and discharge the obligation of said bond and justify the release of the mortgage lien; also that said Fleet Corporation be restrained and enjoined pendente lite from foreclosing or attempting to foreclose the lien of said mortgage dated August 2, 1918, and for other appropriate relief.

333 In said proceeding, said Fleet Corporation showed cause and moved to dismiss petitioner's said bill of complaint because

(1) the cause in effect was a suit against the United States;

(2) because of the exclusive jurisdiction of this Court of Claims in the premises.

Upon hearing, after argument, the honorable Supreme Court of the District of Columbia overruled the motion to dismiss for want of jurisdiction, although being of opinion, as in its order duly entered is stated, that:

"In so far as the plaintiff's (petitioner here) bill of complaint seeks relief with respect to the matters involved in the award of

just compensation as made by the defendant United States Shipping Board Emergency Fleet Corporation, this court (Supreme Court, District of Columbia) is without jurisdiction to grant such relief because, to such extent, the action brought is in effect, a suit against the United States of America, and by the provisions of the acts of Congress of June 15, 1917 (40 Stat., 182, ch. 29), as amended by the act of April 22, 1918 (40 Stat., 535, ch. 62), and of November 4, 1918 (40 Stat., 1022, ch. 201), exclusive jurisdiction to hear and determine all such matters is conferred upon the United States Court of Claims to be pursued in the manner provided for by section 24, paragraph 20 and section 145 of the Judicial Code.

"The court (Supreme Court of the District of Columbia) is further of the opinion that in so far as plaintiff's bill of complaint seeks relief with respect to matters and things involved in or concerning the provisions of agreement of May 14, 1918, between the plaintiff (The Pusey & Jones Company) and the defendant herein * * * and the execution and enforcement of the terms and provisions of bond and mortgage dated August 2d, 1918, given pursuant thereto * * * this court (Supreme Court of the

334 District of Columbia) is possessed of full jurisdictional power to retain said bill of complaint and to the extent justified by the averments of said bill of complaint and ultimately sustained by the proofs, to grant such measure of the relief prayed as may be justified in law and equity."

Wherefore, in addition to overruling and denying the motion to dismiss therein, said Supreme Court of the District of Columbia further ordered:

"That defendant United States Shipping Board Emergency Fleet Corporation be, and it is hereby restrained and enjoined pendent lite and until the further order of this court, from enforcing or attempting to enforce by foreclosure of the lien of the mortgage above (therein) referred to, or otherwise, the obligation of said bond dated August 2d, 1918 * * * provided that said plaintiff (petitioner here) give bond, with satisfactory surety to be approved by the court * * * in the sum of twenty-five thousand (\$25,000) dollars * * * and provided further that within sixty (60) days from and after completion and delivery by the plaintiff (The Pusey & Jones Company) to defendant (United States Shipping Board Emergency Fleet Corporation) of the Pennsylvania Hull No. 17, now (then) under construction at Gloucester yard N. J. of plaintiff (The Pusey & Jones Company) if final satisfactory adjustment of all matters of controversy between the plaintiff and defendant herein shall not have been made, said plaintiff (petitioner here) shall institute in the Court of Claims of the United States its action to fix and recover from the United States the amount of its just compensation for and on account of facilities furnished, services rendered and work done in constructing the thirty-four vessels in said bill of complaint specified."

As hereinbefore set forth, petitioner has completed and delivered to the Fleet Corporation the entire program of thirty-four 335 (34) commandeered vessels which it was ordered to construct to completion including among the vessels so completed and

delivered the said Pennsylvania hull No. 17; no satisfactory adjustment of the matters in controversy between petitioner and said Fleet Corporation has been made; said bill of complaint docketed in said Supreme Court of the District of Columbia as Equity Cause No. 38163 is still pending in that court, and in accordance with the requirement of the order noted in said cause above quoted petitioner institutes this action against the United States not only pursuant to and in accord with the provisions of the acts of Congress in said order of the Supreme Court of the District of Columbia specifically enumerated, but also invokes in aid thereof, to the extent that such aid may be necessary, the general jurisdictional powers of this honorable court as prescribed in and by section 145 of the Judicial Code.

(21) Subsequently to the passing of the order of the Supreme Court of the District of Columbia in said equity cause No. 38,163, said Fleet Corporation still refusing to make application to or in reduction or settlement of petitioner's said bond for \$5,000,000 any part of the amount of \$7,149,975 awarded to petitioner as aforesaid, petitioner renewed its expressions of dissatisfaction with the amount awarded, and demanded payment or proper application of seventy-five (75) per centum thereof, basing its demands in such respect upon so much of paragraph 3 of the Emergency Shipping Fund provisions of the act of June 15, 1917, as reads:

"Wherever the United States shall cancel, modify, suspend, or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall
335 make just compensation therefor, to be determined by the President; and if the amount therefore, so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code." (Italics supplied.)

and upon the applicable provisions of the act approved June 5, 1920, "to provide for the promotion and maintenance of the American Merchant Marine, to repeal certain emergency legislation and provide for the disposition, regulation, and use of property acquired thereunder, and for other purposes," commonly cited and referred to as the "Merchant Marine Act, 1920," said Merchant Marine Act, 1920, among other provisions not here important, containing the following, to wit:

"Sec. 4. * * *

"(c) As soon as practicable after the passage of this act the board (United States Shipping Board) shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or

imposed upon the President by any such act or parts of acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: Provided, That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the acts hereby repealed." * * *

337 "Sec. 35. That the power and authority vested in the board by this act, except as herein otherwise specifically provided, may be exercised directly by the board or by it through the United States Shipping Board Emergency Fleet Corporation."

Pursuant to the authority thus conferred upon the United States Shipping Board it did, on June 9, 1920, formally and duly adopt the following resolution:

"Resolved, That the power and authority relating to the rights and liabilities of the Emergency Fleet Corporation vested in the Shipping Board by subsection 'c' of section 2 of the Merchant Marine Act approved June 5, 1920, be exercised by the Shipping Board Emergency Fleet Corporation, to which is hereby delegated the exercise of such power and authority, in accordance with section 35 of the above-mentioned act."

(22) Notwithstanding the duty thus expressly imposed upon said United States Shipping Board and subordinatedly upon the Fleet Corporation, neither one thereof has adjusted, settled, or liquidated or indicated any willingness on its part to adjust, settle, or liquidate, in whole or in part, said award of \$7,194,975, save only and always upon condition that petitioner should consent and submit to the illegal, unfounded, unjust, and unconscionable proposal of said Fleet Corporation to first deduct therefrom the sum of \$3,776,737, falsely alleged by said Fleet Corporation to have been withheld or withdrawn by said Christoffer Hannevig from the assets of this petitioner.

To enforce compliance with the merely ministerial duty and obligation imposed upon said United States Shipping Board and said Fleet Corporation by the provisions of the acts of Congress

338 next above cited, your petitioner, on or about the 9th day of November, A. D. 1920, filed in the Supreme Court of the District of Columbia its petition for an alternative writ of mandamus commanding and directing said United States Shipping Board and United States Shipping Board Emergency Fleet Corporation and each of them forthwith to pay unto petitioner, or to apply upon and in settlement and release of the bond and mortgage above described, the sum of \$5,396,231.25, being seventy-five (75) per centum of the sum of \$7,194,975 awarded to petitioner as its just compensation as aforesaid, or so much of said sum of \$5,396,231 as may be necessary to fully settle and discharge the amount actually due and payable by petitioner on said bond and mortgage, and any excess over and above such sum or amount as may be necessary for such purpose to pay over to this petitioner.

Said petition for mandamus has been docketed in said Supreme Court of the District of Columbia as cause At Law, No. 64609, and remains pending in said Supreme Court undisposed of.

(23.) Petitioner states that it is the sole owner of the claim against the United States herein set forth; that no assignment or transfer of said claim or of any part thereof or interest therein has at any time been made; that petitioner is justly entitled to the amount claimed after allowing all just credits and offsets; that petitioner has at all times borne true allegiance to the Government of the United States, (and has never at any time aided, abetted, or given encouragement to rebellion against the said Government; and that the facts stated in this petition are true.

(24.) The premises considered, petitioner says that just compensation for the use of its shipyards, plants, machine shops, 339 machinery, tools and appliances, and the services rendered by it to the United States of America, under the orders, directions, instructions, and supervision of the United States Shipping Board Emergency Fleet Corporation, in constructing the thirty-four (34) vessels which it did construct and deliver upon orders of said Fleet Corporation, and in connection with the eleven (11) vessels previously existing contracts for the construction of which were canceled by said Fleet Corporation, is fourteen million three hundred and twenty-eight thousand eight hundred and thirty-nine dollars and thirty-one cents (\$14,328,839.31), itemized as follows, to wit:

On vessels constructed and delivered under specific Fleet Corporation agreements as basis of compensation, to wit:	
(a) Three (3) 5,000 d. w. t. vessels (New Jersey Yard) which were constructed and delivered—15,000 d. w. t.—construction fee as per Fleet Corporation's specific agreement, at \$17.50 per d. w. t.	\$262,500.00
(b) Five (5) 12,500 d. w. t. vessels (Pennsylvania Yard) which were constructed and delivered—62,500 d. w. t.—construction fee as per Fleet Corporation's specific agreement at \$16.32 per d. w. t.	1,020,000.00
(c) One-half ($\frac{1}{2}$) the savings on actual cost of construction of above five (5) vessels, viz., \$7,154,027.37 as against the agreed contract price of \$2,040,000.00 per vessel, total agreed contract price, \$10,200,000.00; total savings \$3,015,972.62, of which one-half ($\frac{1}{2}$) equals	1,522,986.31

340 On vessels specifically contracted for the Fleet Corporation, but contracts for which were subsequently canceled by it, to wit:

(d) Nine (9) 5,000 d. w. t. vessels (New Jersey Yard) with respect to which commitments for materials and much labor expense had been incurred, and all overhead and general plant expenses had been set up prior to cancellation, a construction fee as specified in written agreement, 45,000 d. w. t. at \$17.50 per d. w. t. 787,500.00

Compensation for vessels constructed and delivered not covered by specific agreements with Fleet Corporation:

(e) Eight (8) 4,300 d. w. t. vessels (Wilmington Yard), 34,400 d. w. t., total actual cost of construction, \$7,387,652.72 — construction fee ten (10) percentum on cost of construction 738,765.00

(f) Six (6) 4,000 d. w. t. vessels (Pennsylvania Yard), 24,000 d. w. t., total actual cost of construction, \$5,194,293.92 — construction fee ten (10) percentum on cost of construction 519,429.00

(g) Six (6) 7,000 d. w. t. vessels (Tankers, Pennsylvania Yard), 42,000 d. w. t., total actual cost of construction, \$9,973,350.23 — construction fee ten (10) percentum on cost of construction 997,335.00

341 (h) Six (6) 12,500 d. w. t. vessels (Pennsylvania Yard), 75,000 d. w. t., total actual cost of construction, \$12,178,242.84 — construction fee ten (10) percentum on cost of construction... 1,217,824.00

Compensation for vessels requisitioned and ordered completed, but such orders subsequently canceled:

(i) Two (2) 7,500 d. w. t. vessels (Pennsylvania Yard), with respect to which commitments for materials and much labor expense was incurred, and all overhead and general plant expense had been set up, construction of which was subsequently ordered canceled — 15,000 d. w. t. — construction fee at \$17.50 per d. w. t. 262,500.00

(j) Reasonable allowance for amortization of investment in plant facilities and appurtenances thereto and depreciation of plant and appurtenances 6,500,000.00

(k) To loss and damage resulting from suspension of operations at Pennsylvania and New Jersey Yards under specific orders of Fleet Corporation	500,000.00
Total claimed	\$14,328,839.31

Wherefore petitioner prays judgment for said sum of fourteen million three hundred and twenty-eight thousand eight hundred and thirty-nine dollars and thirty-one cents (\$14,328,839.31), with costs which may be allowed. The Pusey & Jones Company, by Chas. Kimmich, Managing Director.

DISTRICT OF COLUMBIA, ss:

I, Charles Kimmich, being first duly sworn, do say that I am the identical person who executed the foregoing petition for filing in the Court of Claims of the United States, in the corporate name of The Pusey & Jones Company; I am the managing director of said The Pusey & Jones Company, and have personal knowledge of its business affairs, and am authorized and empowered to execute said petition and to direct the institution of the above suit in the said Court of Claims for and on behalf of and in the name of said company; I have read the foregoing petition and well know the contents thereof, and the matters and things therein stated are true to the best of my knowledge and belief. Chas. Kimmich.

Subscribed and sworn to before me this 21st day of January, 1921. [Seal.] Bertha P. Isaacs, Notary Public, D. C.

McKenney & Flannery, Attorneys for Petitioner.

NOTE.—There is annexed to original affidavit Exhibits A, B, C, D, and E, being the same Exhibits annexed to Exhibit A. Not reprinted here. (See record, p. 207.)

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AFFIDAVIT OF HARTWELL CABELL.

[Filed June 18, 1921.]

STATE OF NEW YORK,

County of New York, ss:

Hartwell Cabell, being first duly sworn, deposes and says: I am a member of the New York Bar, with offices at No. 140 Nassau Street, New York City. On or about the twenty-eighth day of February, 1921, I was called into conference by the Hon. Jesse S. Phillips, superintendent of insurance of the State of New York. This conference was brought about by the appointment of a receiver in bankruptcy for one, Christoffer Hannevig. In addition to his activities as shipbuilder and banker, Hannevig had procured a controlling interest in three Insurance Companies, to wit, the Jefferson Insurance Company, a Pennsylvania corporation, the Liberty Marine Insurance Company, a New York corporation, and the North Atlantic Insur-

ance Company, a New York corporation. I was informed by the Superintendent of Insurance that the Commissioner of Insurance of Pennsylvania had under the laws of the State of Pennsylvania taken over the assets and business of the Jefferson Insurance Company, which was in an impaired condition, if not insolvent, for the purpose of liquidating the same and caring for the interests of its policyholders; that he, the Superintendent of Insurance of New York, had taken over the business and assets of the Liberty Marine and North Atlantic under Section 63 of the New York Insurance Law for the purpose of liquidating the affairs of such companies and distributing their assets in accordance with the law.

At the close of this conference I was requested to act for the two insurance departments, that of New York and that of Pennsylvania, as special counsel in connection with the liquidation of these three insurance companies.

I learned that at the time of the receivership of Hannevig & Co., the corporation under which the banking business of Hannevig had been conducted, these three companies appeared upon their books and upon the books of Hannevig & Co. as depositors in the following sums:

Jefferson Insurance Co.....	\$465,504.00
Liberty Marine Insurance Co.....	667,821.00
North Atlantic Insurance Co.....	652,257.00

I was further informed that in accordance with a demand made some time prior to the occasion of my first consultation by the Superintendent of Insurance upon Hannevig these deposits had been secured by Hannevig by various assignments of stocks and securities owned by him in the several corporations in which he was interested and through which he was conducting his various business enterprises. These assignments had been made at various dates. Amongst such assignments one appeared under date of October 14, 1920, whereby certificates Nos. 4, 10 and 18 of The Pusey and Jones Company, representing respectively, 5,000, 2,000 and 200 shares of the preferred stock of said company, were transferred and assigned to the three said insurance companies, together with nine promissory notes of The Pusey and Jones Company, amounting in the aggregate to \$650,000, said assignments being subject to a prior pledge of said stock and notes to one, Karluf Hanssen, a Norwegian citizen. I attach hereto a copy of said assignment and the papers thereto attached, making them a part of this affidavit, the same being marked "Exhibit A." According to my information the property covered by this assignment is the identical property, both as to stock and notes, which is alleged in the bill of complaint herein as belonging to the complainant.

At my first interview with Superintendent Phillips and at interviews thereafter had with other parties interested, I learned of the claim of the Baltimore Dry Docks Company against The Pusey and Jones Company. I learned, further, that this claim had originally been secured by the deposit of a large amount of common and preferred stock of The Pusey and Jones Company, as to which stock the

Baltimore Dry Docks Company had been given a prior lien, but all of which stock had been thereafter transferred to the three insurance companies as additional security, but subject to the prior lien of the Baltimore Dry Docks Company. I learned, further, that the Baltimore Dry Docks Company had undertaken to sell and dispose of the said stock under the terms of the agreement under which they had taken it, and had bid the same in. I ascertained that this agreement contained no provision whereby the pledgee at sale, either public or private, could bid in the property.

I learned, further, that the Baltimore Dry Docks Company had instituted a suit against The Pusey and Jones Company for the full amount of their indebtedness, and that said suit was about to be reached for trial in the courts of Wilmington, Delaware.

During the next several days I examined into the business of The Pusey and Jones Company and ascertained that they were then operating 400 or 500 employes, making paper-making machinery, and that the business was paying a satisfactory profit; that their claim against the United States Shipping Board was in the hands of the Hon. Charles E. Hughes, of the New York Bar, and that it was expected that in the course of time a satisfactory settlement would be reached with the Shipping Board.

316 I was further informed by Mr. Cox and other officers and employes of The Pusey & Jones Company, that it was very desirable to avoid, if possible, the complications of receivership in connection with that property, especially in view of the character of the business which they were transacting, to wit, the manufacture of paper-making machinery; that a large part of their business was the making and selling of spare parts and that certain parts of paper-making machinery had to be renewed constantly; that, therefore, an established business could sell its products whereas a failing business or a business about to be wound up and liquidated could not sell or dispose of paper-making machinery to advantage.

During the next few days I had a number of conferences with Mr. George Weems Williams, of the Baltimore Bar, representing the Baltimore Dry Docks Company, the attorneys for Henry A. Wise, Hannevig's receiver, Mr. Farr, of the Philadelphia Bar, who was the counsel for Pusey & Jones, Mr. George Gordon Battle, of the New York Bar, who represented a number of interests, and a number of other lawyers and persons interested in Hannevig and his enterprises. I was also in constant touch with the Superintendent of Insurance of New York, and with the local representatives of the Commissioner of Insurance of Pennsylvania.

In connection with my duties I examined the pleadings of the then pending case between the Baltimore Dry Docks Company and The Pusey & Jones Company, more especially with respect to a defense which had been set up by The Pusey & Jones Company which in many respects resembles the allegations contained in the bill of complaint herein. I have not at the present time those pleadings before me, but my recollection is that a combination was alleged

347 between the Baltimore Dry Docks Company and the Fleet Corporation, having as an end the prevention of The Pusey

& Jones Company from carrying out its part of the contract of sale. I called upon a number of persons who had been associated with Hannevig at the time of these transactions for information on the subject, consulted with Mr. Farr with respect to the basis of the pleadings and affidavits prepared by him, consulted with the Hon. William H. Hotchkiss, ex-Superintendent of Insurance of New York, who was counsel for the three insurance companies, and as a result of my investigations and conferences, reached the conclusion that this defense was frivolous and unjustified. I was convinced that the Baltimore Dry Docks Company had entered into the contract with The Pusey & Jones Company for the purchase of one of the ship-building plants owned by The Pusey & Jones Company in good faith; that the money was paid in good faith, and that its appropriation by Hannevig, if unlawful, was not by any connivance either with the corporation or with the Baltimore Dry Docks Company.

Under these circumstances, and acting after consultation and in concert with the receiver for Hannevig, Mr. Henry A. Wise, and his attorneys, a number of meetings were held in the office of the Superintendent of Insurance of New York, where the various parties interested were represented, including the Baltimore Dry Docks Company, as a result of which meetings the agreement of March 18, a copy of which is attached to the bill of complaint, marked "Exhibit F," was reached.

That the said agreement was in the first place, and upon the insistence of the Receiver and his attorneys made tentatively, merely, and subject to the approval of the District Court of the Southern District of New York. That after the agreement had been drawn and signed by the various interests all of the parties interested went before the Hon. Julius M. Mayer, District Judge of the United States, where the entire matter was discussed and explained to the Court and his official sanction requested. That as a result of said action, and after examination of the papers and questions addressed by the Court to the parties present, the agreement was approved by the Court, and for the purpose of enabling the Receiver to carry out the same, the election of a trustee was adjourned until further order of the Court. A copy of the papers in connection with this proceeding is attached hereto marked "Exhibit B."

The Superintendent of Insurance of the State of New York and the Superintendent of Insurance of the State of Pennsylvania have been kept at all times fully advised of each and every step which has been taken by me and by other persons, so far as they were taken with my knowledge in connection with Hannevig and Company, The Pusey & Jones Company, and other business interests formerly belonging to Hannevig. The steps which have been taken have seemed advisable for the purpose of avoiding a receivership which might go far to destroy the business of The Pusey & Jones Company, and which would thereby seriously injure the chances of creditors of the three insurance companies and of Hannevig and Company and of Christoffer Hannevig, personally, receiving any substantial part of their debts.

As I looked at it there was no defense to the Baltimore Dry Docks case which would stand for a moment in a Court of Law or Equity: that a judgment in that case, so long as the Shipping Board retained complete control of the finances of The Pusey & Jones Com-
 349 pany could not be paid, and that as a result a receivership would possibly follow and would result in the destruction of the business of The Pusey & Jones Company and a great diminution of the assets available for the payment of claims and the assets available through distribution to stockholders of The Pusey & Jones Company for the liquidation of the three insurance companies.

After I was elected a director of The Pusey & Jones Company my fellow-director, Mr. Henry A. Wise, and I, in the absence of Mr. Williams, representing the Baltimore Dry Docks Company, again went over in detail the claim of that company, the status of the several suits, and again came to the conclusion that the way taken to hold in abeyance the claim of the Baltimore Dry Docks Company while negotiations could be had with the Shipping Board looking to a final settlement between the board and The Pusey & Jones Company, was the proper way and in the interests of all the parties, especially in the interests of stockholders and creditors of The Pusey & Jones Company, other than the Baltimore Dry Docks Company. (Sgd.) Hartwell Cabell.

Sworn to before me this 11th day of June, 1921. [Seal.] (Sgd.) Adele V. Juillerat, Notary Public, No. 40, New York County.

"EXHIBIT A."

This agreement, entered into this 14th day of October, 1920, between Christoffer Hannevig, of New York, N. Y., and Christoffer Hannevig doing business as Hannevig & Company, a private banking institution, of the one part, and the Jefferson Insurance
 350 Company, a Pennsylvania corporation, the Liberty Marine Insurance Company, a New York corporation, and the North Atlantic Insurance Company, a New York corporation, hereinafter referred to as the "insurance companies," of the other part, witnesseth:

Whereas, The insurance companies had heretofore each deposited with Hannevig & Company certain funds, payable on demand, which deposits are hereinafter described as the "deposit obligation," and which deposits, with accrued interest, were on September 30, 1920, respectively as follows:

That of the Jefferson Insurance Company, \$465,504,

That of the Liberty Marine Insurance Company, \$667,821.

That of the North Atlantic Insurance Company, \$652,257, and

Whereas, the insurance companies have each demanded the payment of such deposit obligation, which demands are hereby acknowledged; and

Whereas, such insurance companies now hold by way of pledge certain collateral to such deposit obligation, which is not considered by them sufficient to secure the same; and

Whereas, the said Christoffer Hannevig, in his individual capacity and as doing business under the name and style of Hannevig & Company, and as successor in interest to the partnership consisting of Christoffer Hannevig and Finn Hannevig, doing business as Hannevig & Company, and for and on behalf of himself and of
351 Hannevig & Company, is willing, in consideration of further forbearance by such insurance companies as to such deposit obligation, to offer further collateral thereto;

Now, therefore, in consideration of one dollar (\$1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged:

Christoffer Hannevig hereby sells, assigns and sets over to each of such insurance companies, in the proportion indicated by the deposit obligation to each, as previously stated, and as collateral security to such deposit obligation, all his right, title and interest in and to the property rights and interests more particularly described in the schedule hereto annexed,—all upon the terms and conditions and for the purposes herein mentioned;

On the non-fulfillment, in whole or in part, of such deposit obligation on demand at any time, or in the case of the bankruptcy, insolvency or failure in business of Christoffer Hannevig, then and in such case full power and authority are hereby given the insurance companies, whether acting together or separately, to sell and assign the whole of such property rights and interests or any part thereof, and, in case the evidence thereof is then in possession, to deliver the same, at any broker's board or at public or private sale, at the option of the insurance companies or, if acting separately, of either of them as to its respective interest, on seven days' written notice delivered to him or addressed to him by registered mail at his office, 139 Broadway, New York City. At any such sale, the insurance companies, or either of them, may purchase the whole or any part of such property rights and interest and take possession of the evidence

thereof, free from any right of redemption on the part of the
352 said Christoffer Hannevig, which is hereby waived and released by him. In case of any sale or other disposition hereunder, after deducting all costs and expenses of any kind for collection, sale or delivery, the insurance companies or either of them, as the case may be, may apply the residue of the proceeds of the sale or sales so made to pay the whole or any part of said deposit obligation to them or either of them, whether then due or not due, returning the overplus, if any, to the said Christoffer Hannevig, who agrees to be and remain liable to the insurance companies or either of them, as the case may be, for any deficiency arising upon such sale or sales.

It is expressly agreed, that, in case the evidence of such property rights and interests shall at any time be reduced to possession by said Christoffer Hannevig, he will at once, without demand, deposit such evidence with such insurance companies, and that, thereupon, or in case such evidence is reduced to possession by such insurance companies themselves, this agreement shall be deemed one of pledge as to such evidence and may be enforced accordingly, to the same

effect as if possession of such evidence had been in such insurance companies on the date hereof.

It is further expressly agreed, that no delay on the part of the insurance companies or either of them in exercising any of the rights hereunder or in making further demand of payment of such deposit obligation shall operate as a waiver by such insurance companies or company.

Christoffer Hannevig hereby certifies and agrees, as a part hereof, that, so far as the property rights and interests described in the annexed schedule are evidenced by issued certificates of stock, such certificates are fully paid and non-assessable; also that he
353 is vested and possessed of absolute title to such rights and interests and of the evidence thereof, if not possession, free and clear of any claim, lien or other encumbrance thereon, except as specified in such schedule; also that he will not exercise any voting power on any issued certificate of stock described in such schedule without consultation with such insurance companies or, in any event, contrary to their expressed interests; also that, until the evidence of such property rights and interest is delivered into the possession of such insurance companies, as hereinbefore provided, he will in every way possible aid such insurance companies to reduce the same to possession.

The insurance companies join in the execution of this agreement as evidencing their acceptance of such collateral security according to the terms hereof and not for any other purpose; it being distinctly understood as a part hereof that, in acquiring such property rights and interests as collateral security, they are in no way obligated either to Christoffer Hannevig or to any present or future holder of the property rights and interests mentioned in the annexed schedule or to any other person, partnership, association or corporation to carry out any contract made by Christoffer Hannevig with the person, partnership, association or corporation mentioned in such schedule or with any other person, partnership, association or corporation in any way interested in the debt or obligation referred to in such schedule.

In witness whereof, Christoffer Hannevig and Christoffer Hannevig doing business as Hannevig & Company, has signed and sealed these presents the day and year first above written, and the insurance companies, for the purposes above indicated, have caused these
354 presents to be signed, each by its respective president, and their respective corporate seals to be hereunto affixed, on the same day. Christoffer Hannevig. (L. s.) Christoffer Hannevig. (L. s.) doing business as Hannevig & Company. (L. s.) Jefferson Insurance Company, by C. Steendal, President. (L. s.) Liberty Marine Insurance Company, by C. Steendal, President. (L. s.) North Atlantic Insurance Company, by C. Steendal, President.

SCHEDULE.

(Karluf Hanssen.)

Certificate- Nos. 4, 10 and 18, respectively, for 5,000, for 2,000 and for 200 shares of the preferred stock of The Pusey and Jones Company, the whole being of the par value of \$720,000, pledged to one Karluf Hanssen, of Hangesund, Norway, along with other collateral, all of which collateral is held by him to a debt of Christoffer Hannevig of approximately \$700,000, which can be paid either in dollars or in Norwegian kroners.

The following nine promissory notes of The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., all due and unpaid and owned by Christoffer Hannevig, along with other collateral, and to the debt previously mentioned, viz.:

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1, dated 7/27/17, 4 months	\$50,000
2, " 8/ 1/17, 4 "	50,000
3, " 8/16/17, 4 "	50,000
4, " 8/23/17, 4 "	25,000
5, " 8/29/17, 3 "	25,000
6, " 8/31/17, 3 "	25,000
7, " 9/13/17, 3 "	75,000
8, " 9/27/17, 3 "	50,000
9, " 10/ 1/17, 3 "	300,000

The obligation of the said Hannevig to the said Hanssen and the collateral thereto are described in translations of original papers in the Norwegian language evidencing the same, attached hereto, which translations the said Hannevig certified to be true and complete translations of such originals.

(Translation.)

I, Christoffer Hannevig, hereby testifies that I, today's date have delivered to Mr. H. Karluf Hanssen, as a representative of the nine owners of contracts re Pusey & Jones to whom I owe a considerable amount for overpayment and differences on installments, the shares, etc., numbered below as pledged security for due compensation of the above mentioned expired debt with interest.

The same bonds also shall at the same time serve as security for my likewise expired obligations re Contracts 11, 12, 13 and 14 of Pusey & Jones in accordance with said established Norwegian contracts.

I take the reservation that the said bonds shall be delivered to me for free disposition against cash settlement of the above mentioned liabilities in Norwegian Kroner at the rate of the respective

dates of payment together with 6% interest, it being not admitted
that I have to pay anything else than the \$565,876 (in dol-
356 lars) that I have already placed at disposition in regard to
the sale of the S/S Fire Island.

The bonds that H. Karluf Hanssen hereby acknowledges to have
received as security are:

- 3 Certificates #21, 22, 19 Jefferson In. Co. covering 1160 shares.
- 2 Certificates #20, 21 Liberty Marine Ins. Co. covering 1,000
shares.
- 3 Certificates #20, 21 North Atlantic Ins. Co. covering 1,000
shares.
- 4 Certificates #A4, A10, A18 Pusey & Jones covering 7,200 shares.

New York City, February 13, 1920. (Sgd.) H. Karluf Hanssen.

Today's date has further been deposited under the same terms:

1. Pusey & Jones' note to order Christoffer Hannevig, Inc.
4/m. from 27/7/1917 amount \$50,000
2. Pusey & Jones' note to order Christoffer Hannevig, Inc.
4/m. from 1/8/1917 amount \$50,000
3. Pusey & Jones' note to order Christoffer Hannevig, Inc.
4/m. from 16/8/1917 amount \$50,000
4. Pusey & Jones' note to order Christoffer Hannevig Inc.
4/m. from 23/8/1917 \$25,000
5. Pusey & Jones' note to order Christoffer Hannevig, Inc.
3/m. from 29/8/1917 amount \$25,000
6. Pusey & Jones' note to order Christoffer Hannevig, Inc.
3/m. from 31/8/1917 amount \$25,000

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7. Pusey & Jones' note 3/m. from 13/9/1917 to the order
Christoffer Hannevig, Inc. amount \$75,000
8. Pusey & Jones' note 3/m. from 27/9/1917 to the order
Christoffer Hannevig, Inc. amount \$50,000
9. Pusey & Jones' note to the order Christoffer Hannevig,
Inc. 3/m. from 1/10/1917 amount \$300,000

\$650,000

(Sgd.)

H. KARLUF HANSSEN.

Copy.

The Christiania Group of Norwegian Shipowners, 402 Union Trust
Bldg., Washington, D. C.

Agreement.

Translation of agreement between Mr. Karluf Hanssen of Hauge-
sund, Norway and Mr. Christoffer Hannevig of Kristiania, Norway.

The undersigned Chri. Hannevig and H. Karluf Hanssen have
today agreed upon, that Mr. Hannevig assigns to Mr. Karluf Hans-
sen his rights in and to the ships Rock Island and Fire Island trans-

ferred to him by U. S. Shipping Board for the amount of \$565,875. It is understood that the said amount which Mr. Hannevig has paid as installments on the ships will be deducted in full from Mr. Hannevig's commitments on account of "overpayments" and differences in installments on 9 contracts with the Pusey & Jones Company made by members of the so-called Christiania Group of Norwegian Shipowners.

358 This agreement is made subject to the United States Shipping Board's consent of the transaction above mentioned and provided the U. S. S. B. will allow the above mentioned amount of \$565,875 to be applied against the total purchase price of one of said ships and further that when said purchase price is fully paid the permit of transfer to Norwegian flag will be given, and that title and Bill of Sale for said ship will be assigned to Karluf Hanssen on behalf of the Norwegian contract-owners. (Signed) Christoffer Hannevig. (Signed) H. Karluf Hanssen.

"EXHIBIT B."

United States District Court, Southern District of New York.

In the Matter of CHRISTOFFER HANNEWIG, Bankrupt.

This matter duly came on in open court on Friday, March 18, 1921, and the Court having been fully advised of the matters set forth in an agreement dated March 18, 1921, and a copy of which is attached to the annexed petition, and the Court, after due deliberation, being of the opinion that the interests of this estate and of all other parties require a prompt, just and equitable disposition of all claims of the Pusey & Jones Corporation against the United States Government and the United States Shipping Board and the

359 Emergency Fleet Corporation and the Court finding further that the plans proposed to be carried out pursuant to said agreement should accomplish such a disposition of said matters.

Now, therefore, upon the annexed petition of the Henry A. Wise and Thomas P. Hanagan, the receivers herein, and upon the said agreement, it is, on motion of Saul S. Myers and James N. Rosenberg, attorneys for the receivers herein.

Ordered that said agreement, dated March 18, 1921, a copy of which is hereto annexed, be and the same is hereby confirmed and approved by the Court. It is

Further ordered that the election of a trustee in bankruptcy of the above estate be and the same hereby is stayed for a period of six months from date, as the Court is at present advised, but any and all creditors of the above named bankrupt are hereby permitted to present an application of this Court on notice to all persons who have subscribed to said agreement for an earlier trusteeship, should such applying creditors present to the Court reasons therefor. In the event, however, that an earlier trusteeship is so ordered, any or all of the parties to said agreement shall have the right to with-

draw therefrom if they so indicate their desire to withdraw to this Court at the time of the hearing on any such application for an earlier trusteeship, it is

Further ordered that the above named bankrupt and all his agents, servants and attorneys be and they hereby are directed to execute such papers agreements, resignations, transfers, authorizations, proxies and other documents as may be necessary or proper to carry out the spirit, terms and intention of this order and of the agreement which has hereby been approved, and as may effectually place the affairs of the Pusey & Jones Corporation under the control and management of the Board of Directors set forth in said annexed agreement. Julius M. Mayer, U. S. D. J. Dated, N. Y., March 22, 1921.

United States District Court, Southern District of New York.

In the Matter of CHRISTOFFER HANNEVIG, Bankrupt.

To the Honorable Judges of the United States District Court for the Southern District of New York:

The petition of Henry A. Wise and Thomas P. Hanagan respectfully shows:

The chief asset of the estate of the bankrupt is stock in the Pusey & Jones Corporation. This corporation was a shipbuilding corporation and it has plants at East Gloucester, New Jersey, and at Wilmington, Delaware. It is a Delaware corporation. It has asserted a claim against the United States Government or its agencies, the United States Shipping Board and/or the Emergency Fleet Corporation in the sum of fourteen million dollars. The matter has been in litigation for a considerable time. Messrs. Rounds, Schurman and Dwight are in charge of these litigations. At the time of its receivership, your petitioners found that the bankrupt was in control of the Board of Directors. Various interests considered that they should co-operate to control the affairs of the Pusey & Jones Corporation, these interests being the Insurance Departments of the States of New York and Pennsylvania, the Baltimore Dry Docks and Shipbuilding Company, the Hannevig bankrupt estate and others. Conferences have been going on accordingly ever since the receivership, looking toward a re-constitution of the Board of the Pusey & Jones Corporation, so that all interests might be justly represented and so that progress might be made toward a just and equitable distribution of the claims of the Pusey & Jones Corporation against the Government and its agencies. As a final result of these conferences an agreement has been entered into, of which a copy is hereto attached. This agreement was finally signed on Friday, March 18, 1921. Thereafter upon said agreement being signed, the various representative interests all appeared before this honorable Court and the matter was thereupon duly submitted in open court the agreement was thereupon approved, pursuant to the terms of an order to be entered and an order containing various

provisions which are fully set forth in the order annexed to this petition.

Wherefore, your petitioners respectfully pray for the granting of the annexed order. Henry A. Wise, Thomas P. Hanagan, Petitioners.

362 STATE OF NEW YORK,
County of New York, ss:

Henry A. Wise and Thomas P. Hanagan, being duly sworn, deposes and says:

That he is one of the petitioners above named; that he has read the foregoing petition and that the same is true to the best of his knowledge, information and belief. Henry A. Wise. Thomas P. Hanagan.

Sworn to before me this 22nd day of March, 1921. Mary E. O'Rourke, Notary Public.

Kings County Clerk's No. 49. Kings County Register's No. 2057. New York County Clerk's No. 120. New York County Register's No. 2105.

Note—There was also annexed to this affidavit copy of New York agreement of March 18, 1921, being same as Exhibit "F" to bill of complaint. Not reprinted here. (See record, p. 65.)

AFFIDAVIT OF WILLIAM G. COXE.

[Filed June 18, 1921.]

William G. Coxе, being duly sworn according to law, deposes and says that he is vice-president and General Manager of The Pusey and Jones Company, the defendant in the above suit, and that he has been vice-president and General Manager of the business thereof since March, 1919; that as such, he has full knowledge of the business of the company, and of the business prospect of the company and of the present business now done by the company, and your deponent avers that there is every reasonable prospect that the business of this company can now be successfully continued. I am strongly of the opinion that the placing of the company in the hands of receivers will, in no way, be advantageous to its business prospects, or the best way to settle all disputes existing between the company and the United States Shipping Board, Emergency Fleet Corporation, but that the present method of management, as arranged by the agreement entered into in New York City, on the 18th of March, 1921, represents the best plan which can be adopted, from a business standpoint and from a consideration of all the facts in the case, of carrying on the business of the company. It is true that the plant of the company at Gloucester is now closed down, and is not operating in the building of ships, but I deny that there has been any wasting of the assets of the company, since closing down of its shipping industry, but, on the contrary, the business of the company in the making and repairing of paper-

making machinery has continually increased, until now it is on a substantial and highly profitable basis. I am not of the opinion, in contradiction of the statement in the affidavit of S. Unger Vetlesen, that the only way in which the Gloucester properties could be utilized would be to dismantle the plant, sell the machinery and material and equipment at whatever it would bring as second hand or scrap value, and dispose of the real estate as such. This plant is still in the condition to form the basis of a well-equipped shipbuilding plant, and, while it is true that there is a depression in the shipbuilding business, this depression can only be, in its nature, a temporary one, and the plant still has value for prospective uses, and for immediate use as a repair plant. The plant at Gloucester is not, at present, a liability, in the sense of being an expense of any material consideration to The Pusey and Jones Company. The

364 salary list at the plant does not exceed the sum of \$6000. per month, and this amount is not paid by The Pusey and Jones Company, but paid by the United States Shipping Board, Emergency Fleet Corporation, and the ultimate liability of The Pusey and Jones Company, and of the United States Shipping Board, Emergency Fleet Corporation, for these expenses, will be determined in the final settlement to be made with the United States Shipping Board. The Pusey and Jones Company has now on hand approximately in cash and negotiable notes given by customers of the company, \$423,490.88, of which the sum of \$189,538.96 is cash, and \$243,951.92 are notes which can be negotiated and discounted, and the proceeds thereof realized at any time. The said corporation has now on hand contracts for papermaking machinery and miscellaneous castings, which will extend for a period of, at least, four months, and that new contracts are continuing to be negotiated in the regular course of business, and there are now negotiations pending with parties in the city of New York for a contract for the making of paper-making machinery, aggregating the sum of, approximately, \$200,000. Your deponent avers that all purchasers of paper-making machinery are desirous of dealing with a thoroughly solvent and going concern, whose business will not be disturbed by the intervention of legal proceedings which may lead to the liquidation of the company, inasmuch as the life of all paper-making machinery is long, and during the life of said machinery, the purchasers thereof rely upon the original makers of the machinery to replace parts worn out or destroyed in the use of the machinery. These papers must be secured from the original manufacturers of the machinery, owing to

the fact that said manufacturers are the only parties in possession of the patterns and drawings from which said parts
365 can economically be manufactured. Your deponent further avers that the appointment of receivers by this court, either temporarily, or otherwise, will seriously prejudice the business interests of the defendant corporation, inasmuch as said corporation will not then be able to obtain any further orders and many of the negotiations now under way cannot be successfully carried out, because the prospective purchasers of the paper-making machinery to be manu-

factured by the defendant company cannot readily be induced to enter into contracts for the purchase of such machines, unless they can be assured that the company will continue as a going concern, with ability to carry out in the future the manufacture of the parts which said machines may need, through wear and tear and other damage.

Your deponent further avers that the plant of the defendant company is, at present, employing 550 hands and operating at about 75 per cent of its capacity, and should it be impossible to secure further contracts for paper-making machinery, or should the securing of further contracts be essentially curtailed, there will be thrown out of employment in the city of Wilmington, a number of workmen which may be estimated at from 250 upwards, and in the opinion of your deponent, the above effect must inevitably follow the continuance of receivers in possession of the plant.

Your deponent further avers that the plant of the Pusey and Jones Company, the defendant corporation, is solvent and fully able to pay its obligations as they fall due in the due course of business; that the assets immediately available are as previously stated in this affidavit, and that the present current indebtedness does not exceed the sum of \$25,000, and that the company has for some time past, been discounting its bills for purchases. No other liabilities exist
366 which are immediately due on the part of the company, other than the current liabilities above mentioned. (Sgd.) Wm. G. Coxe.

Sworn to and subscribed before me, this 17th day of June, A. D. 1921. [Seal.] (Sgd.) Samuel H. Baynard, Jr., Notary Public.

SECOND AFFIDAVIT OF WILLIAM G. COXE.

[Filed June 18, 1921.]

STATE OF DELAWARE,

County of New Castle, ss:

William G. Coxe, being duly sworn according to law, deposes and
says:

I am the vice-president and general manager of The Pusey and Jones Company, the defendant in the above proceeding. I have been in the business of ship construction and managing shipbuilding plants for the past twenty-five years, beginning with 1898, and am familiar with the sales and market value of ships, the contracts and the nature thereof which are executed for the construction of ships. I was in the employ of Cramp Shipbuilding Company of Philadelphia, Pennsylvania, in various operating and executive capacities and remained with it until March of 1905, when I was appointed president of the Harlan & Hollingworth Corporation, a shipbuilding plant at Wilmington. I remained with the Harlan & Hollingworth Corporation as president and executive head of that company until November 1, 1917. In April of 1918, I was appointed District Manager for the

Delaware District of the United States Shipping Board,
367 Emergency Fleet Corporation and remained in that position
until after the signing of the armistice on November 11, 1918.
Since March 1, 1919, I have been vice-president and general manager
of The Pusey and Jones Company, and under my management and
direction, there was completed the shipping program undertaken by
The Pusey and Jones Company for the United States Shipping Board.
I was appointed to this position on the solicitation of the Shipping
Board.

In all of the positions above enumerated, I have been engaged not
only in the construction of ships of various types but also in the sale
of the same and am familiar with the market value of ships and the
character of ship contracts which were entered into by the various
shipbuilding firms and corporations throughout the United States.

The claim filed by The Pusey and Jones Company against the
United States Shipping Board Emergency Fleet Corporation in the
Court of Claims, District of Columbia, is filed and asks for compensa-
tion on three classes of contracts.

1. Contracts with the Shipping Board in which a specified fee per
d. w. t. was to be paid. On these amounts, there can be no dispute,
as it is a simple question of multiplying the tonnage delivered by
the specified fee.

2. Contracts with the Shipping Board in which a specified fee per
d. w. t. of \$16.32, together with a clause providing that for all reduc-
tion of costs under the total agreed contract price. The Pusey and
Jones Company would be entitled to retain 50 per cent thereof as an
additional profit. On the total amount to be paid under the specified
fee, there is again no dispute, as this is a multiplication of the ton-
nage by the tonnage fee to be paid. The half savings claimed

368 in the petition are dependent on the cost of construction, and
the amount of this portion of the claim is proper, according
to our records.

3. Vessels in which there was no specific contract, but on which
"just compensation" should be allowed.

On these, the petition filed in the Court of Claims asks for a con-
struction fee of 10 per cent on the cost of construction. In my
judgment, such a fee would be the minimum construction fee which
should be asked under the circumstances, and in considering all con-
ditions which existed in the ship market.

This amount of 10 per cent of the cost of construction was the
amount paid by the Navy Department of the United States Govern-
ment on vessels delivered by The Pusey and Jones Company to the
Navy, and also paid by the Navy Department to my knowledge, to
other builders of ships.

I can also state that the United States Shipping Board in settle-
ments made with various shipbuilders throughout the country, com-
pensated them on a basis of 10 per cent on the cost of construction.

It is my judgment, therefore, as derived from my knowledge and
experience as a shipbuilder and dealer in ships, that 10 per cent on
the cost of construction was the lowest contract profit which could

reasonably be demanded under the conditions that existed at the time these ships were built.

I am familiar with the plants of The Pusey and Jones Company at Wilmington, Del., and at Gloucester, N. J. I am acquainted with the cost of their construction and am familiar with the market value of other shipbuilding plants. In my judgment, the lowest market value at which the plants of The Pusey and Jones Company could be rated at present, considering all market conditions and the conditions surrounding the business of shipbuilding, would be at the sum of \$4,500,000. (Sgd.) William G. Cox.

Sworn and subscribed to before me this 18th day of June, A. D. 1921. (Sgd.) Henry J. Ferney, Notary Public. My commission expires May 9, 1923.

AFFIDAVIT OF CLARENCE B. LYNCH.

[Filed June 18, 1921.]

Clarence B. Lynch, being duly sworn according to law, deposes and says that he is the assistant treasurer of The Pusey and Jones Company, defendant in the above suit, and that as such, he has full knowledge of the facts set forth herein; that endorsed upon complainant's Exhibit "C" is a reference to a letter of September 18, 1917; that a copy of said letter is hereto attached, and that said letter was signed by the duly authorized attorneys for Christoffer Hannevig; and your deponent further avers that the last of the vessels, numbered 1001 to 1008, inclusive, specified in said agreement were completed prior to the first day of August, 1919. (Sgd.) Clarence B. Lynch.

Sworn to and subscribed before me, this thirteenth day of June, A. D. 1921. (Sgd.) Samuel H. Baynard, Jr., Notary Public. Samuel H. Baynard, Jr., Notary Public. Appointed Sept. 11, 1920. Term of office two years, State of Delaware.

370 The Pusey and Jones Company, Wilmington, Delaware.

September 18th, 1917.

U. S. Shipping Board, Emergency Fleet Corporation.

GENTLEMEN: The undersigned are the holders of a joint power of attorney for Christoffer Hannevig, a certified copy of which is annexed hereto. Mr. Hannevig is the holder of the following notes of the Pusey and Jones Company:

\$50,000	Matures	Nov. 27, 1917.
25,000	do.	Nov. 29, 1917.
25,000	do.	Nov. 30, 1917.
50,000	do.	Dec. 1, 1917.
75,000	do.	Dec. 13, 1917.
50,000	do.	Dec. 16, 1917.
25,000	do.	Dec. 23, 1917.

Acting in accordance with the specific powers conferred on us by the said power of attorney, we now state that we have extended the terms of payment of the said notes until the following dates, or until the completion of the last of eight (8) ships, yard Nos. 1001 to 1008 inc. which has been requisitioned by your order of August 3, 1917.

Also acting under the powers conferred by the said power of attorney we hereby agree that we will not accept prepayment of the said notes or any portion of the principal amounts thereof.

We do this in order to induce you to make an advance payment to the Pusey and Jones Company totalling \$465,800.

We will have marked on each of the notes the statement that same have been extended in accordance with this letter.

371 This agreement is made upon the understanding that you will accept prepayment of your advance together with interest if a refinancing arrangement can be made which will be of such a nature as to give the Pusey and Jones Company sufficient working capital. This arrangement is also made upon the understanding that the advance had been made by you as against the engines and boilers for the eight (8) ships sold to the Cunard Line, requisitioned by your Corporation and upon delivery of the last of the eight (8) ships this agreement is to terminate. Respectfully yours. — —

SECOND AFFIDAVIT OF CLARENCE B. LYNCH.

[Filed June 18, 1921.]

STATE OF NEW YORK.

County of New York, ss:

Clarence B. Lynch, being duly sworn according to law, deposes and says:

I am the assistant treasurer of The Pusey and Jones Company and have held that office since May, 1916, and as such I have full knowledge of the financial condition and business prospects of The Pusey and Jones Company.

In my judgment the company is entirely solvent and able to continue its business. It is able to pay all of its debts as they mature in the ordinary course of business, all secured indebtedness is amply secured, its unsecured indebtedness is small, and no demand for payment has been made by any creditor that has not been met either by payment if the money was due, or by defense if the claim was denied, or by satisfactory security.

372 I further aver that the present assets of The Pusey and Jones Company at a fair and reasonable valuation exceed its liabilities. The full details of the financial condition of the company are as follows:

The United States Shipping Board Emergency Fleet Corporation, in connection with its shipbuilding program, advanced to The Pusey and Jones Company in cash the sum of fifty million nine hundred and fifteen thousand eight hundred twenty-one and 56/100 dollars (\$50,915,821.56), as will be seen by the summary attached to this affidavit and made a part hereof.

Of the other items in the summary, the item "Special Budget Cash Advanced for Wages and Salary at the Gloucester Plant" fifty-six thousand seventeen and 38/100 dollars (\$56,017.38) represents wages and salaries paid by the United States Shipping Board at the Gloucester plant since the closing of the plant. These wages and salaries are to continue to be paid out of the funds of the Shipping Board by resolution of the board, and the question of the final liability for their payment will be determined by the settlement to be made with the Shipping Board.

The item of "Former Owner Payments" of five million fourteen thousand one hundred thirty-seven and 50/100 dollars (\$5,014,137.50) represents amounts paid on ships to The Pusey and Jones Company by the parties who contracted for the ships before the plant was commandeered by the United States Government. These items make a total of fifty-five million nine hundred eighty-five thousand nine hundred seventy-six and 44/100 dollars (\$55,985,976.44). If accrued interest on the mortgage be added, there is an additional sum of six hundred thirty-four thousand four hundred eighty-three and 81/100 dollars (\$634,483.81), making a total of

573 fifty-six million six hundred twenty thousand four hundred sixty and 25/100 dollars (\$56,620,460.25). This total represents all of the advances made by the United States Shipping Board to The Pusey and Jones Company, and includes therein the five million dollar (\$5,000,000) mortgage now upon the plant and held by the United States Shipping Board, together with interest on this mortgage, and also the sum of approximately two million seven hundred fifty thousand dollars (\$2,750,000) advanced by the United States Shipping Board to pay off certain liabilities of The Pusey and Jones Company in the year 1919 and referred to in the affidavit of John J. Mason, page three thereof.

Against these advances The Pusey and Jones Company is entitled to set off the cost of ship construction, and this is shown on the last balance sheet dated April 30th, 1921, to be the sum of fifty million nine hundred five thousand twenty-seven and 61/100 dollars (\$50,905,027.61). In addition to this, and as a part of its settlement with the United States Shipping Board, the Pusey and Jones Company is entitled to just compensation for services rendered by it in the building of the ships included in the ship-building program of the United States Government. Thirty-four vessels in all were completely constructed, and eleven vessels had been partly constructed or the construction arranged for when these contracts were cancelled by the United States Shipping Board.

As just compensation for the work done under these contracts The Pusey and Jones Company has entered suit in the Court of Claims of the United States, District of Columbia, claiming therein as just compensation the sum of fourteen million three hundred twenty-eight thousand and eight hundred thirty-nine and 31/100 dollars (\$14,328,839.31). The allowance of this claim would therefore

374 make the account between the United States Shipping Board and The Pusey and Jones Company read as follows:

Advance by The Pusey and Jones Company due on cost of ships	\$50,905,027.61
Due for just compensation	14,328,839.31
	<hr/>
	65,233,866.92
Less advances by U. S. Shipping Board	56,620,420.25
	<hr/>
Balance due The Pusey and Jones Company	\$8,613,446.67

This would mean that The Pusey and Jones Company would have its plants clear of encumbrances so far as the United States Shipping Board is concerned, and would have, in addition, a sum in its treasury to be paid by the United States Shipping Board of eight million six hundred thirteen thousand four hundred forty-six and 67/100 dollars (\$8,613,446.67).

Concerning the other claims now outstanding against The Pusey and Jones Company, I make the following statement:

1. The judgment of the Baltimore Dry Docks Company for eight hundred thousand one hundred twenty-five dollars (\$800,125). All execution or foreclosure on this judgment, I am informed and believe, has now been stayed by an agreement of the parties dated the eighteenth day of March, 1921, and filed and approved or record by the United States District Court for the Southern District of New York, by which the Baltimore Dry Docks Company has agreed to postpone any execution upon its judgment until the 1st of November, 1921. The position of this judgment is therefore identical with that of a second mortgage following the mortgage of the United States Shipping Board.

375 2. The claim of the plaintiff in this suit, Hans Karul Hanssen for six hundred fifty thousand dollars (\$650,000) represented by promissory notes. This claim, I am informed and believe, is a claim that is not collectible in any event until the final settlement between the United States Shipping Board and The Pusey and Jones Company, and I am further informed that there exists against this claim a counter-claim by The Pusey and Jones Company against Christoffer Hannevig for the seven hundred fifty thousand dollars (\$750,000) with interest thereon unlawfully appropriated by him for his own usage from the treasury of the company on the eleventh day of February, 1920, four days prior to the date upon which the plaintiff claims to have received the notes in question as the owner thereof. As to this claim of the plaintiff deponent is informed and believes that the same were deposited with the plaintiff only as collateral security and the plaintiff took said notes solely as pledgee.

3. First mortgage underlying the mortgage of the United States Shipping Board of one hundred fifty thousand dollars (\$150,000) held by David Baird, of New Jersey. This mortgage was extended by agreement to the fifth day of June, 1921, and I am informed that since that time David Baird has raised no objection to waiting for the collection of the same until the action of the new Shipping

Board appointed by the present administration to carry out the provisions of paragraph 26 of the agreement of May 14th, 1918, between The Pusey and Jones Company and the United States Shipping Board, whereby the United States Shipping Board agreed that if no extension of the Baird mortgage could be secured, the Shipping Board would pay the said mortgage out of its advances and add the amount so paid to the moneys to be owed to it by The Pusey and Jones company and secured by the bond and mortgage to the Shipping Board.

4. Certain claims, including the claim of George F. Pawling and Company, are now in litigation in the State of New Jersey. These claims, including the Pawling claim, do not aggregate more than fifty-two thousand dollars (\$52,000) and to each of these claims I am informed, the company has presented a full and complete defense and proposes to assert the same. No judgments exist against the company on these claims. There is no claim now due to the Lewis & Roth Corporation, as set forth in the affidavit of John J. Mason. All claims which the Lewis & Roth Corporation had against The Pusey and Jones Company are now settled and disposed of.

5. There is also current indebtedness not exceeding the sum of twenty-five thousand dollars (\$25,000).

The above claims, with the exception of the claims in litigation, total as follows:

Baltimore Dry Docks judgment.....	\$800,125
Claim of Hans Karluf Hanssen.....	650,000
Baird mortgage	150,000
Current indebtedness	25,000
	<hr/>
	\$1,625,125

The payment of all these claims deducted from the amount mentioned above as due from the United States Shipping Board would still leave a balance of about seven million dollars (\$7,000,000) of cash in the hands of The Pusey and Jones Company over and above the assets represented by their plants.

In addition to the above, the company has now on hand in cash the sum of approximately one hundred eighty thousand dollars (\$180,000) and promissory notes given to it by its customers in part payment of paper-making machinery contracts amounting to approximately two hundred forty thousand dollars (\$240,000). These notes, with the exception of about twenty-five thousand dollars (\$25,000) thereof are capable of immediate negotiation and can be discounted and the proceeds applied to the uses of The Pusey and Jones Company. There is, therefore, a total of liquid assets of the company of three hundred and ninety-five thousand dollars (\$395,000) immediately available for the payment of any indebtedness.

The United States Shipping Board makes a claim against The Pusey and Jones Company for certain sums which the Shipping Board paid to the then owners of the contracts at the time the vessels

under construction in the yards of The Pusey and Jones Company were requisitioned. These sums have been termed "resale profits" and they represent moneys which, as I am informed and believe never became a part of the assets of The Pusey and Jones Company. These resale profits represent profits made on bona fide transfers and re-transfers of the original contracts which The Pusey and Jones Company made for the construction of ships. I am informed and believe that these contracts were sold, and in some cases resold, in the shipping market, in some instances by Christoffer Hannevig or his controlled companies, but in no case did The Pusey and Jones Company profit thereby, and each sale was a legitimate sale with which The Pusey and Jones Company had no connection. The United States Shipping Board in an award made by it in a resolution passed on the thirteenth day of March, 1920, estimated the resale profits which it proposed to charge against The Pusey and Jones Company at the sum of three million seven hundred seventy-six thousand seven hundred thirty-seven dollars (\$3,776,737).

378 Even if this claim were allowed, and it is disputed by The Pusey and Jones Company, there would still exist a payment to be made under the above figures to The Pusey and Jones Company of approximately five million dollars (\$5,000,000) which would leave in the treasury of The Pusey and Jones Company, after deducting all other liabilities, including the claim of the plaintiff in this suit, a sum of approximately three million five hundred thousand dollars (\$3,500,000), excluding the liquid assets above mentioned, and still leaving its plants and properties free and unencumbered.

The Pusey and Jones Company, under the direction of the treasurer of the company, who is a nominee of the United States Shipping Board, and against protest of The Pusey and Jones Company, has carried on its balance sheet as a liability resale profits to the amount of five million two hundred ninety-seven thousand dollars (\$5,297,000). This entry upon the balance sheets of the company is not admitted by the company as correct in any particular, the whole amount being disputed, and has been placed upon the balance sheet merely by order of the treasurer of The Pusey and Jones Company, who, under its contract with the United States Shipping Board, is a nominee of the Shipping Board.

I further aver that the position maintained by The Pusey and Jones Company that it is not properly chargeable with these resale profits by the United States Shipping Board is a position which has been endorsed by its attorneys and the accountants connected with it, including John J. Mason, who at one time was employed in this capacity by Christoffer Hannevig, and who makes an affidavit on behalf of the plaintiff.

379 The company is doing an increasing business in the manufacture of paper-making machinery, is meeting all its liabilities as they mature, is constantly securing new and valuable contracts for the manufacture of paper-making machinery, and the appointment of receivers to take charge of the business of the company

must, in my opinion, prove a very serious detriment to the further progress of such business, and my reasons therefor are substantially the reasons set forth by William G. Coxe in his affidavit filed in this case. I can state from my own personal experience in endeavoring to secure orders for the company that during the year 1919, when the question of the appointment of a receiver for the company was pending in the courts of New Jersey, of the increased difficulty in securing such contracts which even the pendency of an application for a receiver creates.

I aver that so far from any condition which may exist in the paper and pulp industry of today having affected the business of The Pusey and Jones Company, that at the present time The Pusey and Jones Company has more orders on hand and in prospect, and more inquiries for business than it has had in the past six or eight months of its existence.

The above is a full statement of the financial condition of The Pusey and Jones Company. There are not, to my knowledge, any claims against the said company upon which judgment has been entered, except claim of the Baltimore Dry Docks Company upon which no execution can issue until November, 1921. All other claims, with the exception of the mortgage held by David Baird and the current liabilities of twenty-five thousand dollars (\$25,000) are in actual litigation and contested claims, and no threat of foreclosure has been made by David Baird, and the United States Shipping

Board, by its contract, Article 26 thereof, has agreed to take said mortgage, and even should the United States Shipping Board fail to hold to its agreement, the company has ample funds to meet this mortgage.

I deny that the mortgage of the United States Shipping Board is due and payable, or that interest thereon is payable. No payment can be due on this mortgage until the full claims of The Pusey and Jones Company have been adjusted and satisfied by the United States Shipping Board, nor is there any claim or threat of foreclosure made by the United States Shipping Board against The Pusey and Jones Company under this mortgage. There is therefore no danger of any sale of any of the assets of The Pusey and Jones Company under any mortgage or judgment.

On the balance sheet of April 30, 1921, appears an item "Accounts Payable" forty-nine thousand nine hundred five and 49/100 dollars (\$49,905.49) at Gloucester and fourteen thousand seven hundred ninety-eight and 36/100 dollars (\$14,798.36) at Wilmington. This Wilmington account has been liquidated since the date of the balance sheet. Of the forty-nine thousand nine hundred five and 49/100 dollars (\$49,905.49) specified as accounts payable at Gloucester, four thousand four hundred sixty-one dollars (\$4,461) appears on the other side of the balance sheet "Expenditures on Mine Sweepers," and approximately twenty-five thousand dollars (\$25,000) represents claims for ship costs which the New York Shipbuilding Company is now claiming for the cost of ship construction, and which is now in process of adjustment between the United States

Shipping Board and the New York Shipbuilding Company. If this sum is allowed it will be paid by the United States Shipping Board, charged by them as an advance to The Pusey and Jones Company, and re-collected by The Pusey and Jones Company from the United States Shipping Board as a part of the cost of ship construction.

381 Not enumerated in the above statement of the assets of the company are the following:

Accounts receivable, appearing on the balance sheet of April 30:

At the Gloucester plant	\$33,716.13
At the Wilmington plant	193,925.14

Some of this has already been collected and appears in previous items given as cash on hand and notes. At least one hundred thousand dollars (\$100,000) of the balance is good and collectible in due course.

Material and supplies appear on the balance sheet of April 30:

At the Gloucester plant	\$725,436.75
At the Wilmington plant	485,681.29

This material has depreciated in value, but is worth at present prices at least five hundred thousand dollars (\$500,000). These items are more than sufficient to take care of any additional items on the liability side of the balance sheet, most of which are merely bookkeeping entries.

The item "Interest, Sundry Creditors," totaling one hundred thousand dollars (\$100,000) at both plants is merely a reserve set up to take care of possible interest claims of creditors for delayed payments during 1919. Only a small portion of these claims are being pressed. The face of these claims has been settled in full.

The item "Unclaimed Retroactive Wages," twenty-six thousand one hundred six and 81/100 dollars (\$26,106.81) represents increased retroactive wages which were authorized by the Shipping Board and never collected by the employees to whom they were payable.

382 The item "Salaries, Wages, Insurance, Etc.," is discussed in a supplemental affidavit.

I have examined the report of Messrs. Beck and Clark, "Exhibit E" of the complainant's bill, and I state that in regard to said report that *that* report was a report made up largely of estimated and not actual figures, was never adopted by the United States Shipping Board, so far as affiant is informed, and was made more than a year before the completion of the shipbuilding program by The Pusey and Jones Company.

Deponent further avers that he has read the statement occurring on page twelve of the bill of complaint referring to said "Exhibit E," and that it is not true that The Pusey and Jones Company is indebted in the sum of five million dollars (\$5,000,000) to the United States Shipping Board Emergency Fleet Corporation over

and above any sum or sums of money that may be due to The Pusey and Jones Company by reason of any contracts or other relations heretofore or now existing between The Pusey and Jones Company and the said United States Shipping Board Emergency Fleet Corporation, but, on the contrary, the said United States Shipping Board Emergency Fleet Corporation is largely indebted to The Pusey and Jones Company in excess of any sums due to the Emergency Fleet Corporation. Clarence B. Lynch.

Sworn to before me this 16th day of June, 1921. [Seal.] Mary E. O'Rourke, Notary Public.

King's County Clerk's No. 49. Kings County Register's No. 2057. New York County Clerk's No. 120. New York County Register's No. 2105.

383 *Emergency Fleet Corporation Advances to the Pusey and Jones Company up to April 30, 1921.*

Year.	Ship construction.	Plant.	Working capital.	Notes payable.	Total at the end of each year.
Dec. 31, 1918.....	21,439,898.97	4,474,212.02	1,342,660.00	466,318.15	27,723,089.14
Dec. 31, 1918, to Dec. 31, 1919.	15,460,842.91	257,117.61	63,172.34	502,545.18	16,283,678.04
Dec. 31, 1919, to Dec. 31, 1920.	6,558,520.30	7,637.55	171,658.94	.....	6,722,541.69
Dec. 31, 1920, to Apr. 30, 1921.	534,067.04	17,316.81	364,901.16	.....	186,512.69
Totals	43,993,329.22	4,741,038.89	1,212,590.12	968,863.33	50,915,821.56

Summary.

Ship Construction	43,993,329.22
Plant	4,741,038.89
Working Capital	1,212,590.12
Notes Payable Paid.....	968,863.33

Total E. F. C. Cash Advances..... 50,915,821.56

Special Budget Cash Advance for Wages and Salaries at the Gloucester Plant, 1920-1921.....	56,017.38
Former Owner Payments.....	10,311,137.50
Less resale profits as per Balance Sheet Note.....	5,297,000.00
	<u>5,014,137.50</u>

55,985,976.44

634,483.81

Interest accrued to Apr. 30, 1921, on E. F. C. Mortgage, but not paid.....

384 **THIRD AFFIDAVIT OF CLARENCE B. LYNCH.**

[Filed June 18, 1921.]

STATE OF DELAWARE,

County of New Castle, ss:

Clarence B. Lynch, being duly sworn according to law, deposes and says:

I am the assistant treasurer of The Pusey and Jones Company, and as such have full knowledge of the financial condition of the company. In support of the assertion made in my other affidavit, that the assets of the company exceed its liabilities, I submit to the Court the attached revised balance sheet, of the date of April 30, 1921. This balance sheet differs from the balance sheet actually sent out by the company in the following particulars:

On the side of the assets:

1. The real estate and improvements have been reduced to 50 per cent. of their value, making their valuation on this basis \$4,651,373.67, which is the approximate figure given as the lowest valuation of the plants by William G. Cox, in an affidavit filed herewith.

2. There is added to the assets side, the sum of \$3,418,238. This amount represents the award originally made by the United States Shipping Board on March 13, 1920, after a deduction of resale profits. Therefore, it represents the lowest amount which The Pusey and Jones Company could hope to recover in any action against the Shipping Board.

3. "Quick assets" corresponds to "current assets." On the balance sheet of April 30, 1921, the changes are as follows:

385 There have been eliminated, Gloucester accounts receivable \$33,716.13; cash in bank, mine sweeper account, \$42,962.50; advance payments, \$4,069.35; undistributed overhead in suspense, \$216,499.47, and the amounts specified for materials and supplies have been cut in half, and only 50 per cent. of their cost value taken.

On the liabilities side:

1. The difference on this side between \$61,917,460.25 found on the original balance sheet and \$56,620,460.25 is caused by the disappearance of the resale profits of \$5,297,000 from the first item. These resale profits were deducted by the Fleet settlement, and so appear in the item on the assets side.

2. On this side is also placed the notes held by Karluf Hanssen. All liability on these notes is contested, but they are placed here for the purpose of proving complete solvency.

3. The judgment of the Baltimore Dry Docks and Shipbuilding Company is placed on the liabilities side. These items leave a surplus of assets over liabilities of \$1,640,891.11.

It may be stated here that the items under the head "Reserves" are all items on which there is no immediate liability, and on which no liability may accrue in the future.

The item accrued salaries, wages, insurance, unclaimed wages, etc., of \$123,322.59 is made up in part of accrued and unpaid salaries of Christoffer Hannevig, \$36,000; Ralph James M. Bullova, \$5000, and Finn Hannevig, \$5628. (This latter claim has since been settled by a small payment.)

Accrued wages, \$13,260. These are wages which have
386 accrued for the last week of the month, and which are wiped out by payment the following month.

Unclaimed wages, \$17,126. These are wages uncalled for, some of which date back for a period of ten or twelve years.

Unclaimed retroactive wages, \$23,500. These are the unclaimed retroactive wages which were ordered by the Shipping Board at the Gloucester plant, and were never collected by the employes.

The total of these is approximately \$100,000. The remainder is almost entirely made up of accrued taxes, \$17,000 and interest on the Baird mortgage, \$3,750, which has since been paid. (Sgd.) Clarence B. Lynch.

Sworn and subscribed to before me this 18th day of June A. D. 1921. [Seal] (Sgd.) Henry J. Feeney, Notary Public.

My commission expires May 9, 1923.

Revised Balance Sheet—April 30, 1921.

Assets.		Liabilities.	
Real Estate Improvements, Shipway piers, wharves, basins, Buildings, Plant Machinery Equipment, etc., at cost Value.....	11,986,501.54	Advances by Emergency Fleet Corporation directly or indirectly for ship construction, plant construction and working capital.....	55,985,376.44
Less Depreciation.....	2,683,754.21	Accrued Interest on above.....	634,482.81
" 50%	9,302,747.33	Notes Held by C. Hannevig or Pledges to be repaid after E. F. C. settlement.....	650,000.00
Cost of Construction of E. F. C. Vessels delivered and accepted plus cost of equipped vessels.....	50,505,927.61	Accrued Interest thereon.....	116,554.04
Award for Just Compensation by U. S. Shipping Board Emer. Fleet Corporation March 15, 1920, after deduction of resale profits.....	3,418,228.00	Mortgage held by David Baird on Gloucester Plant.....	766,354.04
Quick Assets:		Judgment Balto. D. D. & Shipbuilding Co.,	170,000.00
Cash in Bank and on hand.....	155,519.84	Special Advances by H. Hannevig during 1919.....	800,125.00
U. S. Govt. Liberty Bonds.....	3,300.00		110,141.92
Accounts Receivable.....	196,925.14	Accounts Payable.....	64,703.85
Insurance Paid in advance.....	72,656.03	Unclaimed Salaries, Wages, etc.....	120,322.59
Notes Receivable.....	187,461.48	Liberty Bond deposits by employees not claimed.....	64.00
Material and Supplies at 50% of Cost Value.....	605,529.02	Reserves:	
Expenditures on Paper Making Machinery Contracts over and above payments recd. on account.....	200,702.38	Purchase of Trolley Loop Gloucester Plant.....	23,443.50
Payments due from U. S. Navy.....	4,461.00	Interest Sundry Creditors.....	100,000.00
		Uncollected Refractive Wages	26,106.81
		Doubtful Accounts.....	5,671.10
		Surplus	157,221.41
			1,640,891.11
			60,431,284.17

Record from U. S. Dist. Court.

AFFIDAVIT OF HOLDEN A. EVANS.

[Filed June 18, 1921.]

STATE OF MARYLAND,
City of Baltimore, ss:

I, Zella Kuhn, a Notary Public, of the State of Maryland, in and for the City of Baltimore aforesaid, do hereby certify that on the eleventh day of June, 1921, before me personally appeared Holden A. Evans and made oath in due form of law to the following facts:

That he is and has been since the formation of the Baltimore Dry Docks and Ship Building Company, a corporation duly incorporated under the laws of the State of Maryland, president of the said company and that as such president the question of the said company purchasing from the said Pusey and Jones Company the Gloucester Yards of the said company was taken up with him by Christoffer Hannevig. That the terms of the said purchase were substantially agreed on, on or before the eleventh day of February, 1920, and that on or about the tenth day of February, 1920, the said affiant being in the City of New York with Clement C. Smith, the Chairman of the Board of Directors of the said Dry Docks Company, he wired George Weems Williams, general counsel for the Dry Docks Company to come to New York to prepare the necessary papers; and that on the morning of February 11, 1920, the said affiant met said Smith and said George Weems Williams at the New York office of the said Dry Docks Company, and the affiant informed the said Williams that the Dry Docks Company had reached an agreement with The Pusey and Jones Company for the purchase of said property, and that as part of the transactions it was understood
389 that the said Christoffer Hannevig would pledge with said Dry Docks Company twenty thousand shares of the preferred stock of the said Pusey and Jones Company and substantially all of the common stock of said company.

That after the proposed transaction had been discussed with the said Williams it was suggested by the said Williams that before any agreement should be executed it would be advisable to call up, over the long distance telephone, John Barton Payne, who was then Chief Executive of the United States Emergency Fleet Corporation and the United States Shipping Board, to ascertain from the said Payne whether or not the proposed transaction would be satisfactory to the Emergency Fleet Corporation and the said Shipping Board, it being known to this affiant that there was some controversy between The Pusey and Jones Company and the Shipping Board; and the said affiant talked with the said Payne, advised him of the proposed purchase by the Dry Docks Company of the said Gloucester Yards of the said Pusey and Jones Company, and asked if it would be satisfactory to the Fleet Corporation and the Shipping Board, and the said Williams likewise talked with the said Payne along the said lines and this affiant and the said Williams were both informed by

the said Payne that the said proposed transaction was satisfactory.

That thereafter the affiant, with the said Williams, went to the office of Christoffer Hannevig, 139 Broadway, New York City, and there met the said Hannevig and his counsel and several others, and there was then prepared, after considerable discussion and interchange of views, an agreement dated February 11, 1920 between the Dry Docks Company and The Pusey and Jones Company; and

there was also prepared a non-negotiable receipt wherein the
390 Dry Docks Company acknowledged the receipt from Christoffer Hannevig of twenty thousand shares of the preferred stock of The Pusey and Jones Company and substantially all of the common stock of said company, and in said receipt were set forth the terms and conditions upon which the said stock was held.

That after the execution of said papers there was delivered a check, drawn to the order of The Pusey and Jones Company by the Baltimore Dry Docks and Ship Building Company, for the sum of seven hundred and fifty thousand dollars (\$750,000) being part payment on account of the purchase price of the said Gloucester Yards as provided for in said contract of February 11, 1920 between the said companies, and that at the time of the delivery of said check there was no agreement, knowledge or understanding on the part of the Dry Docks Company or any of its officials that said check, or the proceeds thereof, should or would be used by said Hannevig individually.

That thereafter The Pusey and Jones Company being unable to convey the property mentioned in the contract of February 11, 1920, and the time having expired for the conveyance of said property, the said Dry Docks Company made demand on said Pusey and Jones Company for the return of the said seven hundred and fifty thousand dollars (\$750,000) and notified the said Christoffer Hannevig of said default and made demand on him, as guarantor of said company.

Subsequently on more than one occasion the said Dry Docks Company advertised or started to advertise The Pusey and Jones stock held by it as aforesaid at public sale, but the officers of The Pusey and Jones Company and the said Hannevig urged and requested the said Dry Docks Company to postpone said sale and not to take any
drastic action, but to wait and see if negotiations between

391 the said Pusey and Jones Company and the said Shipping Board would turn out satisfactorily, and that in pursuance of these repeated requests the said Dry Docks Company withdrew the advertisement for sale of said stock and took no action against the Pusey and Jones Company until August, 1920. That during the interval between April, 1920 and August, 1920 the counsel for the said Dry Docks Company, namely George Weems Williams, was in conference with the officials of The Pusey and Jones Company and the officials of the Shipping Board looking to a settlement of the controversy between the Shipping Board and The Pusey and Jones Company, or at least the repayment of the sum of seven hundred and fifty thousand dollars (\$750,000) to the Dry Docks Company, and that on more than one occasion it appeared that such a settlement would be made, but finally in August, it then appearing that

negotiations would not result in a settlement, the Dry Docks Company advertised the stock of the said Christoffer Hannevig for sale, and purchased it, it being the only bidder, and it then made demand on The Pusey and Jones Company to transfer the stock which demand was refused, and it made repeated demands on the Pusey and Jones Company for the repayment of the sum of seven hundred and fifty thousand dollars (\$750,000). The Pusey and Jones Company offered to make part payment, and all the officials of The Pusey and Jones Company with whom this affiant came in contact never, on any occasion, disputed the liability of the said Pusey and Jones Company for the said sum of seven hundred and fifty thousand dollars (\$750,000).

That the said Dry Docks Company having waited until September, 1920, filed its suit at law, so your affiant is informed, in the United States District Court for the District of Delaware, against
392 The Pusey and Jones Company to recover the said sum of seven hundred and fifty thousand dollars (\$750,000). That the said case was finally set for hearing on March 22, 1921, and that this affiant appeared as witness therein and testified to the circumstances surrounding the execution of the said agreement of February 11, 1920, and to the indebtedness above mentioned and was subject to cross-examination by counsel for The Pusey and Jones Company.

That subsequently the matter was in the hands of S. M. Henry, one of the vice-presidents of the Dry Docks Company, and the said George Weems Williams, as counsel, and that he, the affiant was informed from time to time of the situation; but that on March 18 and for several weeks prior thereto, this affiant was in the State of Florida on a vacation, and, therefore, he has no personal knowledge of what took place in the negotiations between the various parties in interest which led up to the execution of the memorandum of March 18, 1921.

This affiant denies that Christoffer Hannevig applied for financial assistance from the Baltimore Dry Docks and Ship Building Company in February, 1920, and this affiant denies as absolutely false and without foundation the averment contained in the bill of Hans Karluf Haussen that the check for seven hundred and fifty thousand dollars (\$750,000) was delivered personally to the said Hannevig by the Dry Docks Company for the purpose of enabling the said Hannevig to use the proceeds thereof individually or improperly; and he further denies the allegation that neither the said check nor the proceeds thereof ever came within the power, disposition or control of the said Pusey and Jones Company, but on the contrary he avers that the check was made to the order of The Pusey and Jones
393 Company and delivered to the said Hannevig as president of said company; and that in so doing this, the affiant understood that he was acting in conformity with the telephone talk hereinabove mentioned with John Barton Payne.

This affiant denies that the contract of February 11 was entered into with full knowledge on the part of the Dry Docks Company, that it was a device on the part of the said Christoffer Hannevig to afford him an opportunity to appropriate the amount of said check

to his own use, and to defraud the stockholders and creditors of the said Pusey and Jones Company; and this affiant further denies as false and absolutely without foundation the averment "that said plan had been consummated and that said Christoffer Hannevig could fraudulently appropriate said money to his own use"—on the contrary this affiant does not know to date what disposition was made of said check except that from the endorsement it appears to have been deposited to the account of the said Pusey and Jones Company, and it was not for a number of days after February 11, 1920 that this affiant heard any suggestion that the proceeds of the check or any part thereof had been improperly applied.

That this affiant, on behalf of the said Dry Docks Company avers that the said judgment obtained by the said Dry Docks Company against the said Pusey and Jones Company was honestly and fairly obtained for a debt honestly contracted and for money paid over by the Dry Docks Company to the said Pusey and Jones Company.

That this affiant has examined the photostatic copy of the said check for seven hundred and fifty thousand dollars (\$750,000) and finds that it was endorsed to Hannevig and Co. by The Pusey and Jones Company, by Christoffer Hannevig as president, and apparently paid by the National City Bank on which it was drawn
394 to the Empire Trust Company of New York. (Sgd.) Holden A. Evans.

Subscribed and sworn to this eleventh day of June, 1921. (Sgd.) Zella Kuhn, Notary Public. [SEAL.]

AFFIDAVIT OF GEORGE WEEMS WILLIAMS.

[Filed June 18, 1921.]

STATE OF MARYLAND,

City of Baltimore, ss:

I, Zella Kuhn, a notary public of the State of Maryland, in and for the City of Baltimore aforesaid, do hereby certify that on the eleventh day of June, 1921, before me personally appeared George Weems Williams and made oath in due form of law to the following facts:

That he is and has been since the formation of the Baltimore Dry Docks and Ship Building Company, a corporation duly incorporated under the laws of the State of Maryland, general counsel for said company and that on or before the eleventh day of February, 1920, he was called, as such counsel, to New York to confer with Holden A. Evans, President of said Company and Clement C. Smith, Chairman of the board of directors of said company, the subject of conference being the purchase by the said Baltimore Dry Docks and Ship Building Company of the property known as the Gloucester Yards of the Pusey and Jones Company.

That on the morning of February 11th, he met the above-mentioned gentlemen at the New York office of the said Dry
395 Docks Company and was informed that the officers of the

said Dry Docks Company had reached an agreement with the Pusey and Jones Company for the purchase of said property, and that as a guarantee of said transaction, and to protect the Dry Docks Company in the payment of \$750,000, the said Christoffer Hannevig, the president of the said Pusey and Jones Company, and then the owner of practically all the capital stock of said company would pledge with the said Dry Docks Company twenty thousand shares of the preferred stock of the said Pusey and Jones Company and substantially all of the common stock of said Company.

That the affiant suggested that before executing any agreement it would be well to call up, over the long distance telephone, John Barton Payne, who was then the head executive of the United States Emergency Fleet Corporation and of the United States Shipping Board, and that this was done, and both the said Evans and the said affiant talked with the said Payne and informed him of the proposed purchase by the Dry Docks Company of the said Gloucester Yards of the said Pusey and Jones Company and asked if it would be satisfactory to the said Fleet Corporation and the said Shipping Board, and both were informed by him that the said transaction was satisfactory to the said Payne.

That thereafter the said affiant with the said Evans went to the office of Christoffer Hannevig, 139 Broadway, New York City, and met there the said Hannevig and his counsel and possibly one or two other persons, that there was then formulated, after considerable discussion and interchange of views, the agreement dated February 11, 1920, between the said Dry Docks Company and the said Pusey and Jones Company, copy of which is filed with the bill of complaint of Hans Carluf Hanssen; and there was also prepared 336 a non-negotiable receipt in which said Dry Docks Company acknowledged receipt from the said Christoffer Hannevig of twenty thousand shares of the preferred stock of the said Pusey and Jones Company and substantially all of the common stock of the said Company, and in said receipt were set forth the terms and conditions upon which the said stock was held.

That after the execution of said papers there was delivered a check, drawn by the Baltimore Dry Docks and Ship Building Company to the order of The Pusey and Jones Company for the sum of seven hundred and fifty thousand dollars (\$750,000) being part payment on account of the purchase price of said Gloucester Yards as provided for in said contract of February 11, 1920, between the said companies.

That there was no agreement, knowledge or understanding on the part of the Baltimore Dry Docks and Ship Building Company that the said check or the proceeds thereof should or would be used by the said Hannevig individually. That thereafter, under the terms of the contract of February 11, 1920, the said Pusey and Jones Company being unable to convey the property therein mentioned to the purchaser, the purchaser to wit, the Baltimore Dry Docks and Ship Building Company made demand on the said Pusey and Jones Company for the return of the said seven hundred and fifty thousand

dollars (\$750,000) paid as aforesaid, and also notified the said Christoffer Hannevig of the default and made demand upon him as guarantor of said company.

That the officers of the said Pusey and Jones Company urged and requested the said Dry Docks Company not to take drastic action but to wait and see if negotiations between the said Pusey and Jones Company and the United States Shipping Board would turn out satisfactorily; and that in pursuance of these repeated requests the said Dry Docks Company waited until August, 1920, and it then appearing that said negotiations between said Pusey and Jones Company and the United States Shipping Board would not result in a settlement of said Dry Docks Company advertised the stock of the said Christoffer Hannevig for sale and purchased it, it being the only bidder, and thereafter it made demand on the said Pusey and Jones Company to transfer the said stock, which demand was refused, and thereupon the said Dry Docks Company brought its bill in equity in the United States District Court for the District of Delaware against The Pusey and Jones Company for a transfer of said stock, which cause is now pending, the said Christoffer Hannevig having intervened therein, and the said Pusey and Jones Company having filed an answer.

That the Baltimore Dry Docks and Ship Building Company in September, 1920, having made demand on The Pusey and Jones Company for the return of the said seven hundred and fifty thousand dollars (\$750,000) and the demand being refused brought its suit at law in the said United States District Court for the District of Delaware and pleas were filed by the said Pusey and Jones Company.

That the Dry Docks Company made every effort to have the case set for trial and that finally it was set for March 22, 1921. That more than a month previous to said last mentioned date the affairs of Christoffer Hannevig having become involved, the affiant was requested by certain New York attorneys to come to New York for the purpose of considering the situation of The Pusey and Jones Company, and he was urged to advise the Baltimore Dry Docks and Ship Building Company that it would be for the best interest of all concerned that receivers be appointed for The Pusey and Jones Company, that after a careful examination of the affairs of The Pusey and Jones Company the affiant came to the conclusion that it would be advisable and to the best interest of all concerned that no receivers be appointed for The Pusey and Jones Company, and that from February 12, 1921, to March 18, 1921, this affiant had a series of conferences with all interested in the affairs of Christoffer Hannevig or The Pusey and Jones Company including the receivers in bankruptcy of the said Christoffer Hannevig, their attorneys, the representatives of the Insurance Departments of the States of New York and Pennsylvania, who were liquidating certain insurance companies which owned stock or were pledgees of the stock of The Pusey and Jones Company, personal counsel of Christoffer Hannevig and a number of others.

That as a result of these negotiations the agreement of March 18 was entered into by all the parties in interest and was approved by

the United States District Judge in whose court the bankruptcy proceedings of Christoffer Hannevig were being administered; that in the course of the negotiations this affiant was urged not to insist on judgment, but he felt that he could not, consistent with the interests of his client, postpone the obtaining of judgment against The Pusey and Jones Company, but he agreed on behalf of the Dry Docks Company that his company would not disturb the status quo until November 1, 1921, in order that those in charge of the affairs of The Pusey and Jones Company would have ample time and opportunity to negotiate for a settlement with the United States Shipping Board.

That when the case of the Dry Docks Company against The Pusey and Jones Company was called for trial, The Pusey and Jones Company was represented by several counsel and the Dry Docks Company was put to proof by said counsel. This affiant further avers that there is not and never was any bona fide defense that could have been urged against the claim of the said Dry Docks Company and that the agreement entered into by all the parties in interest on March 18, 1921, was not only not illegal or improper but was for the best interest of all interested in any way either as creditors, stockholders, or as pledgees of the stock of the said Pusey and Jones Company. (Sgd.) George Weems Williams.

Subscribed and sworn to this eleventh day of June, 1921. [Seal] (Sgd.) Zella Kuhn, Notary Public.

AFFIDAVIT OF WILLIAM A. GLASGOW, Jr.

[Filed June 18, 1921.]

STATE OF PENNSYLVANIA,

County of Philadelphia, ss:

William A. Glasgow, Jr., being duly sworn according to law, deposes and says that he is a practicing attorney at the bar of Philadelphia County, Pennsylvania, and has practiced for many years past in the Federal courts of Pennsylvania, and the Supreme Court of the United States and has also argued and tried cases before the District Court of the United States for the District of Delaware. That some time in September, 1920, he was associated with Chester N. Farr, Jr., Esq., general counsel for The Pusey and Jones Company, to assist in the defense to an action brought against The Pusey and Jones Company by the Baltimore Dry Docks and Ship building Company, being No. 6, of September Term, 1920. District Court of the United States for the District of Delaware, being the suit referred to by the plaintiff, Karluf Hansen, in paragraph 11 of complainant's bill. At that time there were also associated with your deponent and Chester N. Farr, Jr., Esq., Robert Penington, Esq., and George N. Davis, Esq., both attorneys at law practicing at Wilmington, Delaware. Your deponent avers that he and his associates made a careful and exhaustive examination of the testimony which might be produced on behalf of The Pusey & Jones Company and such defenses as it might be able to offer to the said

action brought by the Baltimore Dry Docks and Shipbuilding Company against it in the District Court of the United States, in the District of Delaware.

That said examination of the facts of the case included interviews with various parties from whom information could be secured for the purpose of setting forth the defense of The Pusey and Jones Company, said interviews taking place in connection with other counsel associated with your deponent in this case, and made by your deponent alone.

Your deponent in this connection, examined certain records of The Pusey and Jones Company, for the purpose of further informing himself of the full facts in regard to the case, so that any possible defense which might exist on the part of The Pusey and Jones Company might be properly proven at the trial.

Your deponent had full and frequent conferences with his associate concerning all matters connected with the case, all directed to the same purpose.

Your deponent avers that among other defenses, there was discussed at these conferences, the suggested defenses set forth in paragraph 14 of the complainant's bill, but that on investigation, no testimony was found, in the judgment of your deponent and
401 all other counsel, which would justify the submission of such a defense in a court of justice.

After this full and complete examination of the facts and the testimony which could be used in support of such facts, your deponent was of the opinion, together with the other counsel in the case, that there was no valid defense which could be offered by The Pusey and Jones Company to the suit brought against it by the Baltimore Dry Docks and Shipbuilding Company, and that the only possible means by which The Pusey and Jones Company could escape an adverse verdict was by reason of some defects in the proofs to be submitted by the plaintiff, the Baltimore Dry Docks and Shipbuilding Company, in the presentation of its case.

Your deponent, with Messrs. Penington and Davis, accordingly tried this case on the twenty-second day of March, 1921, before this Honorable Court. The witnesses for the plaintiff corporation were put to full proof, and at the conclusion of the case a judgment was rendered against the defendant, The Pusey and Jones Company.

Your deponent denies absolutely the averment of the bill that the said judgment was illegally and unlawfully suffered to be entered in the above action of covenant, but avers that every step in the proceeding was taken with the utmost good faith and with every desire to offer on behalf of The Pusey and Jones Company whatever defenses might be available. (Sgd.) Wm. A. Glasgow, Jr.

Sworn to and subscribed before me this 16th day of June, A. D. 1921. [Seal.] (Sgd.) Meyer Kraus, Notary Public. My commission expires March 4, 1923.

AFFIDAVIT OF R. J. CANNON.

[Filed June 18, 1921.]

STATE OF NEW YORK,

County of New York, ss:

R. J. Cannon, being duly sworn, deposes and says that he is the assistant treasurer of The Pusey and Jones Company at the plant of The Pusey and Jones Company known as the Gloucester plant;

That deponent was first employed by The Pusey and Jones Company in the month of September, 1918, and continued in such employment as assistant to the treasurer from September, 1918, to February, 1919, both inclusive;

That in February, 1919, he was made assistant treasurer of The Pusey and Jones Company at the Gloucester plant and has continued as such assistant treasurer to the present date;

That he is familiar with the financial status and affairs of The Pusey and Jones Company;

That deponent has heard dictated and has read the affidavit of Clarence B. Lynch on behalf of The Pusey and Jones Company herein verified the sixteenth day of June, 1921, and is familiar with the contents thereof, and that the statements contained in said affidavit are true;

That deponent has the same knowledge of the books of the corporation and of its financial status and affairs as the said Clarence B. Lynch, and makes this affidavit as to the facts stated in the affidavit of said Clarence B. Lynch with the same effect as though said statements were incorporated herein in full. (Sgd.) R. J. Cannon.

Sworn to before me this 16th day of June, 1921. [Seal.] Mary E. O'Rourke, Notary Public. Kings County Clerk's No. 49. Kings County Register's No. 2057. New York County Clerk's No. 120. New York County Register's No. 2105.

AFFIDAVIT OF LAWRENCE LEONARD.

[Filed June 18, 1921.]

STATE OF PENNSYLVANIA,

County of Philadelphia, ss:

Lawrence Leonard, being duly sworn according to law, deposes and says that the attached paper is a true and correct copy of the original undertaking signed by Christoffer Hannevig, Inc., on file with the United States Shipping Board Emergency Fleet Corporation, at Washington, D. C. under the provisions of article 23 of the contract of May 14, 1918, executed between The Pusey and Jones Company and the United States Shipping Board Emergency Fleet Corporation. (Sgd.) Lawrence Leonard.

Sworn and subscribed to before me this 17th day of June, A. D. 1921. (Sgd.) Edith W. Smeltzer, Notary Public. [Seal.] My commission expires March 7, 1925.

Whereas, Christoffer Hannevig, Inc., has advanced heretofore as a loan to The Pusey and Jones Company the sum of six hundred fifty thousand (\$650,000) dollars.

Whereas, The Pusey and Jones Company has applied to the United States Shipping Board Emergency Fleet Corporation for a loan not to exceed five million (\$5,000,000) dollars on its bond and mortgage covering all its real and personal property for the purpose of financing its plant extension and has made and entered into an agreement dated May 14, 1918, providing for said loan; and

Whereas, as an inducement to the United States Shipping Board Emergency Fleet Corporation to make said loan, said Christoffer Hannevig, Inc., is willing that payment of said loan of six hundred fifty thousand (\$650,000) dollars by The Pusey and Jones Corporation be deferred until the full repayment to the United States Shipping Board Emergency Fleet Corporation of the principal and interest of the bond and mortgage provided for in the agreement above mentioned, so that said bond and mortgage may be a prior claim and lien to the loan of Christoffer Hannevig, Inc.

Now therefore, Christoffer Hannevig, Inc., a corporation of the State of New York, does hereby agree in consideration of the above and the sum of one dollar (\$1) and other good and valuable considerations to it in hand paid by The Pusey and Jones Company, the receipt of which is hereby acknowledged, that payment of its loan of six hundred fifty thousand (\$650,000) dollars be deferred until the full repayment by The Pusey and Jones Company of the principal and interest of a loan not to exceed five million (\$5,000,000) dollars advanced by the United States Shipping Board Emergency Fleet Corporation, and secured by a bond and mortgage of The Pusey and Jones Company, and does further agree that said loan made by the United States Shipping Board Emergency Fleet Corporation shall be a claim and lien on the real and personal property of The Pusey and Jones Company prior to the loan of six hundred fifty thousand (\$650,000) dollars heretofore made to The Pusey and Jones Company by Christoffer Hannevig, Inc.

In witness whereof, the said Christoffer Hannevig, Inc., has caused these presents to be executed by its properly authorized officers and its corporate seal to be affixed and attested on this twenty-first day of May, 1918. Christoffer Hannevig, Inc., by (Sgd.) Christoffer Hannevig, President.

Attest: [Seal.] (Sgd.) J. B. Simpson, Secretary.

The undersigned, being all the stockholders of Christoffer Hannevig, Inc., hereby consent to the agreement hereto attached providing that the repayment of the loan of six hundred fifty thousand (\$650,000) dollars made by Christoffer Hannevig, Inc., to The Pusey and Jones Company heretofore be deferred until full repayment of the principal and interest of the bond and mortgage given to secure a loan not to exceed five million (\$5,000,000) dollars made by the United States Shipping Board Emergency Fleet Corporation to The Pusey and Jones Company.

Witness our hands and seals this twenty-first day of May, 1918.
(Sgd.) Christoffer Hannevig. [l. s.]

I hereby certify that this is a true and correct copy of an instrument, the original of which is on file in the office of the United States Shipping Board Emergency Fleet Corporation, Washington, District of Columbia. [Seal.] (Sgd.) John J. Flaherty, Secretary.

406 STATE OF NEW YORK,
County of New York, ss:

On this twenty-first day of May, in the year one thousand nine hundred and eighteen, before me personally came Christoffer Hannevig, to me known, who, being by me duly sworn, did depose and say that he resides in the Borough of Manhattan, City, County and State of New York; that he is the president of Christoffer Hannevig, Inc., the corporation described in, and which executed the foregoing instrument, that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order. [Seal.] (Sgd.) George A. Conroy, Notary Public, Queens County. Certificate filed in N. Y. County, No. 241.

AFFIDAVIT OF HENRY A. WISE.

[Filed June 18, 1921.]

STATE OF NEW YORK,
County of New York, ss:

Henry A. Wise, being duly sworn, says That he is a citizen and resident of the City, County and State of New York, and that he is a member of the Bar of the State of New York, duly licensed and practising as such, and that he is a member of the Bar of the Supreme Court of the United States and of the United States Circuit Court for the Second Circuit, and of the United States District Court
407 for the Southern District of New York, and that he has from time to time been admitted pro hac vice to practice in the United States District Court for the District of Delaware and has appeared in said court for the trial of several cases on various occasions.

That he has read the bill of complaint herein and is familiar with the contents thereof and with the exhibits thereto attached.

That heretofore and prior to the eleventh day of February, 1921, one Christoffer Hannevig was engaged in business in the Borough of Manhattan, City, County, State and Southern District of New York, and among other things, was engaged in the conduct of a banking business under the style and name of Hannevig & Company, with a banking house at No. 139 Broadway, Borough of Manhattan, City of New York, and that on the eleventh day of February, 1921, an involuntary petition in bankruptcy was filed against said Christoffer Hannevig in the United States District Court for the

Southern District of New York, and that on the said eleventh day of February, 1921, Hon. John C. Knox, one of the Judges of the United States District Court for the Southern District of New York, made and entered an order wherein and whereby this deponent and one Thomas P. Hanagan were appointed temporary receivers of all of the goods, wares and merchandise, account books, chattels, choses of action, real estate and all other property of whatsoever nature and wheresoever located, belonging to, or being the property of or in the possession of said Christoffer Hannevig. Annexed hereto is a certified copy of said order, marked Exhibit "A."

That on said eleventh day of February, 1921, this deponent executed and filed with the clerk of said court a bond in the sum of \$20,000, conditioned for the faithful performance of his duties as such Receiver, which said bond was duly approved by said court. That on the eleventh day of February, 1921, this deponent entered upon the discharge of his duties as Receiver as aforesaid, and has continued as such Receiver from said date to and including the date of this affidavit. That on the fifteenth day of February, 1921, the said Christoffer Hannevig was duly adjudicated to be a bankrupt.

That immediately following and upon such appointment and qualification as Receiver as aforesaid, deponent proceeded to take possession of any, all and every asset of every description whatsoever belonging to said Christoffer Hannevig, of which this deponent had knowledge in so far as deponent was able so to do.

That upon deponent's appointment as such Receiver as aforesaid, deponent learned from examinations conducted by him and for him that said Christoffer Hannevig had been the owner of 47,637 shares of the preferred stock and 3,850 shares of the common stock (all of the par value of \$100 each) of The Pusey and Jones Company, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and that these shares constituted the entire issued and outstanding stock of said corporation, with the exception of eighteen shares in six certificates of three shares each, which were qualifying shares standing in the names of the then directors of said corporation. That as a result of the investigations conducted by and on behalf of this deponent, deponent was informed that the status of such shares of stock of the said The Pusey and Jones Company, was as follows: 15,000 shares of the preferred stock were held by the National City Bank of the City of New York for account of Den Norske Handelsbank, a Norwegian corporation, which, in turn, held the same as collateral for certain obligations of Christoffer Hannevig. That 7,200 shares of said preferred stock were held by the complainant herein as collateral security for a certain obligation of said Christoffer Hannevig. That 3,421 shares of said preferred stock were held by the Insurance Commissioners of the States of New York and Pennsylvania, as security for certain obligations of said Christoffer Hannevig, and that 20,000 shares of said preferred stock and 3,850 shares of said common stock were held by the Baltimore Dry Docks and Shipbuild-

ing Company, a corporation, as security for certain obligations of said Christoffer Hannevig.

That following the appointment and qualification of deponent as Receiver as aforesaid, deponent employed as his legal representatives Saul S. Myers, Esq., and James N. Rosenberg, Esq., both members of the Bar of the State of New York and of the United States District Court for the Southern District of New York, and after being informed as to the status of the stock of The Pusey and Jones Company and of it being held as security as aforesaid, deponent conferred with his said attorneys and was advised by them that he, as Receiver of Christoffer Hannevig under and pursuant to the aforesaid order, was the beneficial owner of said stock and as such under the laws of the State of Delaware had the right to vote thereon at all meetings of the stockholders of said corporation and that the equity therein, if any, after the said stock pledged as aforesaid should have been subjected to the satisfaction of the liens thereon by the respective pledgees, would come to deponent as such Receiver. Deponent was informed and verily believes that the aforesaid 20,000 shares of preferred stock and 3,850 shares of common stock held by the Baltimore Dry Docks and Shipbuilding Company as collateral as aforesaid, had been pledged with said company by said Christoffer Hannevig as collateral under an agreement between Christoffer

Hannevig and said Baltimore Dry Docks and Shipbuilding
410 Company and that under such collateral agreement said

Hannevig was in default and that said Baltimore Dry Docks and Shipbuilding Company had pretended to sell said collateral and gone through the form of a sale thereof, at which said sale it had attempted to and pretended and claimed to have purchased such collateral and at the time of deponent's appointment as such Receiver, said Baltimore Dry Docks and Shipbuilding Company was pretending and claiming to have acquired title to such stock as the result of said sale and purchase as aforesaid, and deponent was informed by his legal advisers aforesaid that said pretended sale was naturally void and of no effect and that the said Baltimore Dry Docks and Shipbuilding Company had not acquired any right or title to said 20,000 shares of preferred stock and 3,850 shares of common stock and this deponent as Receiver as aforesaid could, in a proper proceeding, have such sale vacated and set aside. Within a day or two after deponent's appointment as Receiver as aforesaid, deponent learned that said Baltimore Dry Docks and Shipbuilding Company had instituted a suit in this court against said The Pusey and Jones Company, in an action to recover the sum of \$750,000, together with certain accrued interest thereon, which said \$750,000 had been paid by said Baltimore Dry Docks and Shipbuilding Company to The Pusey and Jones Company as an initial payment under a contract which was subsequently abrogated and that issue had been joined in said action and that such suit would shortly be reached for trial. At the time when deponent was appointed Receiver as aforesaid, deponent found in the employ of said Christoffer Hannevig two gentlemen who had been connected with said Hannevig in his

business operations for several years to wit, Messrs. James B. Simpson and Wilbur Tusch, and from conversations with these gentlemen, deponent discovered that they were well acquainted with the details of the principal operations in which said Hannevig had been engaged for a period of upwards of three years. Accordingly, deponent applied to the United States District Court for the Southern District of New York for leave to employ these two gentlemen and they have since the fifteenth day of February, 1921, continuously been in the employ of this deponent as Receiver as aforesaid. On consulting with Messrs. Simpson and Tusch, deponent learned from them that in the year 1920 the Baltimore Dry Docks and Shipbuilding Company entered into a contract with The Pusey and Jones Company, whereby it was, among other things, agreed that the latter company should sell to the former company its shipbuilding plants located at Gloucester, New Jersey, for which the former company should pay to the latter company the sum of \$4,200,000, and that at the time, or at about the time that this agreement was entered into, the Baltimore Dry Docks and Shipbuilding Company paid to The Pusey and Jones Company a sum amounting to \$750,000 on account of the stipulated purchase price of said properties and that simultaneously with the entering into of this contract, the Baltimore Dry Docks and Shipbuilding Company had entered into a collateral agreement with the said Christoffer Hannevig, under which said agreement said Hannevig agreed that if the said Pusey and Jones Company should fail to give title to the property to be conveyed by it to the said Baltimore Dry Docks and Shipbuilding Company, The Pusey and Jones Company would return to said Baltimore Dry Docks and Shipbuilding Company the aforesaid initial payment of \$750,000, and as security for this collateral promise of said Hannevig, the said Hannevig had deposited with the Baltimore Dry Docks and Shipbuilding Company certificates of stock of The Pusey and Jones Company for 20,000 shares of the preferred stock and 3,850 shares of the common stock, and deponent was further informed that the aforesaid initial payment of \$750,000 was made by the Baltimore Dry Docks and Shipbuilding Company by delivery of its check payable to the order of The Pusey and Jones Company, which said check was delivered to Christoffer Hannevig, who, at the time of such delivery, was the president of The Pusey and Jones Company and the owner of the entire issued and outstanding capital stock of said company, with the exception of the qualifying shares for the then board of directors which, also, were perhaps owned by him, and deponent was further informed that said Hannevig, at the time of receiving said check, was conducting a banking business in the City of New York under the name of Hannevig & Company, and that he, as president of The Pusey and Jones Company, had endorsed the aforesaid check and deposited the same in his aforesaid bank in New York City, and through said bank had collected the proceeds thereof.

That deponent was further informed and verified this information by an examination of the minute book of the directors of The

Pusey and Jones Company, that following the deposit of said check by Hannevig as aforesaid, the board of directors of The Pusey and Jones Company had ratified and approved his action in endorsing and depositing the same as aforesaid. Deponent was also informed that The Pusey and Jones Company was solvent, that there was a controversy existing between it and the United States Shipping Board Emergency Fleet Corporation as to whether The Pusey and Jones Company was indebted to the Shipping Board, or the Shipping Board to The Pusey and Jones Company. Deponent devoted considerable attention to the various claims asserted by each, and came to the conclusion that there was a considerable balance due and

owing to The Pusey and Jones Company by the United States Shipping Board Emergency Fleet Corporation over and above all claims by the United States Shipping Board for advances to The Pusey and Jones Company, and on examination of all the accounts and affairs of The Pusey and Jones Company as subsequently made, deponent concluded that a very large sum would ultimately have to be paid to The Pusey and Jones Company by the United States Shipping Board Emergency Fleet Corporation, which would more than pay all of the debts of The Pusey and Jones Company and leave a substantial balance which would in fact belong to Christoffer Hannevig as the sole stockholder of the corporation. At the time of deponent's appointment as Receiver as aforesaid, there was pending in the Court of Claims of the United States a suit by The Pusey and Jones Company against the United States Shipping Board Emergency Fleet Corporation, wherein the amount claimed to be due to The Pusey and Jones Company amounted to approximately \$14,000,000, against which the Shipping Board would undoubtedly have offsets which would probably reduce the recovery of the plaintiffs to an amount approximating \$8,000,000 or more. Christoffer Hannevig had been the principal stockholder of three separate insurance companies, two operating under the laws of the State of New York and one operating under the laws of the State of Pennsylvania, but conducting its principal business in the State of New York. Through his aforesaid bank he had become indebted to these insurance companies in the aggregate of approximately \$1,700,000. The Insurance Commissioners of these two States had secured from him assignment of all his stockholdings in The Pusey and Jones Company as indemnity for his indebtedness to the three insurance companies aforesaid. These assignments covered and were a second lien upon the stock held by the Baltimore Dry Docks and Shipbuilding Company as aforesaid. The Insurance

Commissioners of these two States were interested, therefore, in The Pusey and Jones Company to the extent of \$1,700,000, or so much thereof as might be necessary to protect the policyholders of said insurance companies. Various creditors of Christoffer Hannevig were threatening proceedings which might result in the appointment of a receiver of The Pusey and Jones Company. Deponent, representing the interest of the creditors of Christoffer Hannevig, bankrupt, was interested in preventing any action that

would diminish the value of the stock of The Pusey and Jones Company. The legal representatives of the Insurance Commissioners of the States of New York and Pennsylvania were similarly interested. The legal representatives of the Baltimore Dry Docks and Shipbuilding Company expressed themselves as having a similar interest. As a result, these three interests conferred and discussed the situation generally, and after many conferences and after many discussions with other attorneys representing other creditors of Christoffer Hannevig, bankrupt, the agreement of March 18, 1921, a copy whereof is attached to the bill of complaint herein, was negotiated, formulated and signed. Deponent being an officer of the United States District Court, realizing that he could not enter into any such agreement without the approval of the court, requested his counsel, Messrs. Myers and Rosenberg, who had conducted the negotiations leading up to said agreement, to present the same to the court for confirmation. Accordingly, on the twenty-second day of March, 1921, a copy of said agreement was submitted to Hon. Julius M. Mayer, one of the judges of the United States District Court for the Southern District of New York, together with a petition signed by deponent and his co-receiver, Thomas P. Hanagan, a copy of which said petition is hereto annexed and marked Exhibit "B," and upon said petition the matter came on for hearing in open court 415 and then and there all of the signatures to the aforesaid agreement of March 18, 1921, appeared in person, or by their legal representatives, before Hon. Julius M. Mayer, District Judge as aforesaid, and the matter was fully presented, and thereupon said Judge made and entered an order bearing date March 22, 1921, a certified copy whereof is hereto annexed and marked Exhibit "C." If, as alleged in paragraph marked "11" of the bill of complaint herein, said agreement was illegal and improper, deponent respectfully submits that it was at least entered into after full presentation of the facts, with the written authority and approval of the United States District Court for the Southern District of New York. At the time when this agreement was entered into, this deponent was not acquainted with any officer or director of the Baltimore Dry Docks and Shipbuilding Company, nor had deponent ever met any legal representative thereof, nor was deponent acquainted with either the Insurance Commissioner of the State of New York or the Insurance Commissioner of the State of Pennsylvania, nor had this deponent ever met the legal representative thereof. In entering into said agreement, this deponent did so in the honest belief that it was in the best interest of The Pusey and Jones Company and of the creditors of Christoffer Hannevig, bankrupt, and deponent arrived at said conclusion after having been Receiver of Christoffer Hannevig, bankrupt, for upwards of five weeks, during which time deponent had devoted a great amount of his time in the study of the affairs of said bankrupt and of The Pusey and Jones Company, and after having the able assistance of two reputable members of the New York Bar, to wit, Messrs. Saul S. Myers and James N. Rosenberg, upon whose business judgment and legal opinions deponent fully relied.

416 Shortly after the entry of Judge Mayer's order hereinbefore referred to, the old board of directors of The Pusey and Jones Company resigned and carrying out the spirit of the aforesaid agreement, a new board of directors was elected consisting of:

(1) William G. Coxe, of Wilmington, Delaware, a gentleman well-known to this Court, a man of wide business experience and of great knowledge in shipping matters, a gentleman who had been the district superintendent of the United States Shipping Board Emergency Fleet Corporation for the District embracing the States of New Jersey, Pennsylvania and Delaware and who had but recently been appointed as receiver of a shipbuilding company by the Honorable Judge of this Court.

(2) Laurence Leonard, an employe of, and the representative of, the United States Shipping Board Emergency Fleet Corporation, who had been for upwards of one year the Treasurer of The Pusey and Jones Company, and who held such title and office under and pursuant to the terms of the agreement between the United States Shipping Board Emergency Fleet Corporation and The Pusey and Jones Company, bearing date May 14, 1918, a copy whereof is attached to the affidavit of James B. Simpson herein, verified the eleventh day of June, 1921, and to which reference is hereby made as if herein set forth.

(3) Hartwell Cabell, Esq., a well-known member of the Bar of the State of New York, legal representative of the Insurance Commissioners of the State of New York.

(4) George W. Williams, Esq., a well-known member of the Bar of the State of Maryland, sometimes practicing before this Court, the legal representative of the Baltimore Dry Docks and Shipbuilding Co.

(5) Deponent.

417 By securing the signing of the aforesaid agreement of March 18, 1921, by the Baltimore Dry Docks and Shipbuilding Company, deponent believed that the possibility of an application for the appointment of a receiver of The Pusey and Jones Company had been forestalled and that The Pusey and Jones Company would be able to proceed in the regular conduct of its business and to operate as a going concern and that its goodwill would not be destroyed by any receivership and that before the term of six months provided for in said agreement should have expired, that the new board of directors of The Pusey and Jones Company would be able to negotiate a settlement with the United States Shipping Board Emergency Fleet Corporation which would result in the payment of a sum of money to The Pusey and Jones Company sufficient to retire the debts of that company to all of its creditors and to leave a large sum to be paid to the holders of the outstanding stock of The Pusey and Jones Company and deponent is still confirmed in this belief.

Upon the election of the new board of directors of The Pusey and Jones Company as aforesaid, said board organized and elected Mr. William G. Coxe as vice-president and general manager of the company and he was placed in charge of the business operations of the company. Mr. Laurence Leonard was elected treasurer of the company and placed in charge of the funds of the company, in accord-

ance with the terms of the agreement between the company and the United States Shipping Board Emergency Fleet Corporation. The executive committee was created consisting of Messrs. Cabell and Williams and deponent. This executive committee, ever since its appointment, has been engaged principally in informing itself as to the details of the transactions between The Pusey and Jones Company and the United States Shipping Board Emergency Fleet Corporation and in conferences with the legal representatives of said United States Shipping Board Emergency Fleet Corporation with a view to arriving at an adjustment of the differences existing between the two concerns and in the hope of arriving at a just and equitable settlement of the claims of The Pusey & Jones Company against the Shipping Board. These arrangements have been carried to the point where the United States Shipping Board Emergency Fleet Corporation has about completed an audit of the accounts between the two concerns which, when completed, will afford a basis for a discussion of all points of difference and it is hoped and believed by this deponent, and I believe by all of the members of the executive committee, that within the next ninety days we should be able, in view of the knowledge that we have gathered of all of the facts, to negotiate a settlement whereby a large sum of money will be paid to The Pusey and Jones Company. Being an officer of the court, this deponent, of course, would not consummate any settlement with the United States Shipping Board Emergency Fleet Corporation without pre-senting all of the facts to the Court which appointed deponent as receiver of Christoffer Hannevig and receiving the approval of such Court.

Immediately after deponent became a member of the board of directors and of the executive committee of The Pusey and Jones Company as aforesaid, the first matter that presented itself for consideration and determination was what action should be taken by the corporation in the suit then pending in this court, wherein the Baltimore Dry Docks and Shipbuilding Company was plaintiff and The Pusey and Jones Company defendant. Mr. George Weed Williams, who was a member of the executive committee, represented the Baltimore Dry Docks and Shipbuilding Company. Consequently he was disqualified from sitting in judgment upon this question. Mr. Cabell and his deponent had a lengthy discussion of this question. Notwithstanding the fact that he and I were both members of the Bar of more than twenty-five years standing, we had taken legal advice and conferred with a number of attorneys learned in the law. We were both fully informed as to all of the facts and circumstances surrounding the claim of the Baltimore Dry Docks and Shipbuilding Company. We knew the circumstances under which that company had given its check to The Pusey and Jones Company and the circumstances under which that check had been endorsed by Hannevig as president of The Pusey & Jones Company and deposited by him in his private bank. We knew of the action of the board of directors of The Pusey and Jones Company in effect approving of this act by Hannevig. We made partial study of reported cases in the courts of the United States and in vari-

ous State courts and after giving our best judgment to the questions involved it was the mutual opinion of Mr. Cabell and myself that there was no valid defense to the action and that it would be a waste of time and money to offer any special defense in the action. We were represented in that action by Robert Pennington, Esq., of the Wilmington Bar, who had been informed of the facts. The Pusey and Jones Company had in its employ Chester N. Farr, Esq., of the Pennsylvania Bar, who had for many years been the secretary and general counsel of The Pusey and Jones Company. He was advised as to the facts and as to the law and he advised that there was no valid defense to the action. Relying, therefore, upon the unanimous opinion of members of the Bars of the States of Delaware, Pennsylvania and New York, and applying our own judgment, we concluded

that there was no legitimate defense to the action and that it
420 would be a waste of time to interpose any special defense.

The statement contained in paragraph "11" of the bill of complaint to the effect that the judgment entered in said action on March 22, 1921, was suffered to be entered by reason of a certain illegal and improper agreement entered into between the plaintiff in said judgment and The Pusey and Jones Company, is a wilful, deliberate and unwarranted falsehood.

The statement contained in paragraph marked "11" of said bill of complaint to the effect that said judgment was illegally and unlawfully suffered to be entered is likewise an unwarranted falsehood. Deponent verily believes that every material fact relating to the transactions between Christoffer Hannevig and the Baltimore Dry Docks and Shipbuilding Company was known to every member of the board of directors of The Pusey and Jones Company at the time when said judgment was entered and that every member thereof, in failing to cause or procure The Pusey and Jones Company to interpose any special defense in said action, or to make any real defense in said action, was the result of the honest judgment of each and every member of the said board of directors, and that in this attitude each and every member of said board of directors was acting according to his honest judgment and belief and what he considered to be in the best interest of said corporation.

Deponent has conferred with Mr. James B. Simpson and Mr. Wilbur Tusch regarding the allegations in the bill of complaint to the effect that the plaintiff, on February 13, 1920, became the lawful owner of 7,200 shares of the preferred stock of The Pusey and Jones Company and to the effect that on or about the same date the complainant became the lawful holder of nine certain notes aggregating \$650,000, together with accrued interest thereon. Deponent

421 states on information and belief that the statement of the plaintiff contained in paragraph marked "1" of the bill of complaint to the effect that 7,200 shares of the preferred stock of The Pusey and Jones Company were on or about February 13, 1920, sold, assigned and transferred to the complainant and ever since said date have been and now are held by complainant, is untrue and that there is no foundation in fact whatsoever therefor, and that on the contrary the fact is that said 7,200 shares of stock, and no part

thereof, were ever sold, assigned or transferred to the complainant but on the contrary that certificates of stock representing 7,200 shares of the preferred stock of The Pusey and Jones Company were delivered to the plaintiff as collateral security for an obligation of Christoffer Hannevig to seven or more citizens of Norway and that said plaintiff received and has ever since held and now holds said certificates of stock as the representative of said citizens of Norway and holds the same only as pledged collateral for seven or more separate obligations of Christoffer Hannevig. The source of deponent's information and the grounds of his belief as to these allegations are the affidavit of said James B. Simpson herein, verified the eleventh day of June, 1921, and the original documents therein referred to, all of which have been examined by deponent.

Deponent further states on the same source of information and belief that the allegations contained in paragraph "5" of the said bill of complaint to the effect that on February 15, 1920, the aforesaid certificates of stock were duly sold, assigned, transferred and delivered by the lawful holder to the complainant and that the same then and there became the property of the complainant, is
422 untrue. The deponent states the fact to be that since the eleventh day of February, 1921, the complainant herein has never made demand upon deponent for the payment of any debt due to complainant or to any Norwegian interest or interests represented by him of any debt due by Christoffer Hannevig, bankrupt. That said complainant has not filed with the Referee in Bankruptcy in the matter of Christoffer Hannevig, bankrupt, any claim for any indebtedness for which the aforesaid certificates of stock were deposited with him as security. That the said complainant has never communicated with this deponent at any time regarding any indebtedness of Christoffer Hannevig to complainant or any Norwegian interest or interests represented by complainant.

On information and belief deponent states that the allegations contained in paragraph marked "7" of the bill of complaint to the effect that complainant is a creditor of The Pusey and Jones Company in the sum of \$650,000, with interest thereon, all of which indebtedness is now due and payable and is represented by nine promissory notes of the Pusey and Jones Company, the details of which are therein specified, is untrue and deponent states on information and belief that the complainant is not the owner and holder of the notes referred to in paragraph "7" of the bill of complaint herein or the owner and holder of any of said notes, and further that he never has been the lawful owner or holder of any or all of said notes and that as a matter of fact said complainant merely holds said notes as the representative of certain creditors of Christoffer Hannevig, bankrupt, and holds the same as collateral security under an express agreement signed by the complainant bearing date February 15, 1920. The source of deponent's
423 information and the grounds of his belief are the aforesaid affidavit of James B. Simpson.

Deponent asserts that in everything that he has done in connection with the affairs of The Pusey and Jones Company he has been

actuated solely and wholly by the motive and desire to accomplish results which would be of the greatest possible benefit to everyone having an interest, direct or indirect, immediate or remote, in the welfare of The Pusey and Jones Company. Deponent resents the insinuations and accusations of a citizen of a foreign country against reputable members of the Bar of the State of New York, all of whom have been admitted to practice in the Supreme Court of the United States. Deponent resents the insinuations and accusations of such foreign citizen against the integrity of the Judge of the United States District Court for the Southern District of New York, who authorized the agreement of March 18, 1921. Deponent has been acquainted for nearly twenty-five years with the counsel for the complainant in this case and offers said counsel as a witness to testify to deponent's good character and unblemished reputation. (Sgd.) Henry A. Wise.

Sworn to before me this 11th day of June, 1921. (Sgd.) Jos K. Guerin, Commissioner of Deeds, City of New York, No. 97.

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EXHIBIT 1.

At a Stated Term of the United States District Court for the Southern District of New York Held at the Court Rooms Thereof, Post Office Building, Borough of Manhattan, New York City, on the 11th Day of February, 1921.

Present: Hon. John C. Knox, Judge.

In Bankruptcy. No. —.

In the Matter of of CHRISTOPHER HANNEVIG, Individually and Doing Business under the Name of Hannevig & Co., Alleged Bankrupt.

Whereas, an involuntary petition in bankruptcy has this day been duly filed in the office of the Clerk of this Court, against the above named alleged bankrupt, and it appearing that a subpoena has duly been issued against said alleged bankrupt, as required by law, and upon reading and filing the annexed petition of Osler Wade and a bond of the said petitioning creditor having been duly filed and approved; and it appearing that the granting of this order is necessary to preserve the assets of the above named alleged bankrupt.

Now, it is, on motion of Saul S. Meyers, attorney for said petitioning creditor,

Ordered, that Henry A. Wise & Thomas P. Hanagan be, and he hereby is appointed temporary receiver of all goods, wares and merchandise, accounts, account books, chattels, choses in action, real estate and all other property of whatsoever nature and wheresoever located, belonging to or being the property of or in the possession of the above named alleged bankrupt; and it is further

Ordered, that said receiver give a sufficient joint and several bond to the people of the United States in the sum of \$20,000 dollars

(§——), conditioned for the faithful performance of his duties as such receiver; and it is further

Ordered, that said receiver be and he is hereby empowered forthwith to take possession of all property of whatsoever nature and wheresoever located, now owned by or in the possession of said alleged bankrupt, and of all and any property wheresoever located and of whatsoever nature, being the property of said alleged bankrupt and in the possession of any agent, servant, officer, or representative of said alleged bankrupt, and said receiver is authorized to do all and any such acts and take all and any such proceedings as may enable him forthwith to obtain possession of all and any such property; and it is further

Ordered, that all persons, firms and corporations, including said alleged bankrupt, and all attorneys, agents, officers and servants of said alleged bankrupt forthwith deliver to said receiver all property of whatsoever nature and wheresoever located, including merchandise, accounts, notes and bills receivable, drafts, checks, moneys, securities and all other choses in action, account books, records, lands and buildings, life and fire and all other insurance policies in the possession of them, or any of them, and owned by the alleged bankrupt, and said alleged bankrupt is ordered forthwith to deliver to said receiver all and any such property now in the possession of the said alleged bankrupt; and it is further

426 Ordered, that all persons, firms and corporations including all creditors of said alleged bankrupt, and the representatives, agents, attorneys and servants of all such creditors, and all sheriffs, marshals and other officers, and their deputies, representatives and servants, are hereby enjoined and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer or dispose of or in any way interfere with any property, assets or effects in the possession of the said alleged bankrupt, or owned by said alleged bankrupt and in the possession of any officers, agents, attorneys or representatives of said alleged bankrupt, and all said persons are further enjoined from executing or issuing or causing the execution or issuance or the suing out of any Court, of any writ, process, summons, attachment, replevin, or any other proceeding for the purpose of impounding or taking possession of or interference with any property owned by or in the possession of said alleged bankrupt, or owned by said alleged bankrupt and in the possession of any agents, servants, or attorneys of said alleged bankrupt; and it is further

Ordered, that all persons, firms and corporations be and they hereby are enjoined from disturbing or interfering with gas, telephone service, heat, electrical service, water supply or any other utility of like kind, furnished to said alleged bankrupt, and are hereby enjoined from cutting off or discontinuing the furnishing of any such utilities to said alleged bankrupt except upon three days' notice in writing to said receiver, and all persons, firms or corporations owning real or personal property, including any lands or buildings in which is located any property of said alleged bankrupt, are enjoined pending the further order of this Court,

427 from removing or interfering with any property of said alleged bankrupt. [Seal.] Jno. C. Knox, U. S. D. J.

A true copy. Alex Gilchrist, Jr., Clerk.

The attention of receivers is especially directed to instructions to receivers Nos. 2, 3 and 4.

EXHIBIT 2.

In the United States District Court, Southern District of New York.

In the Matter of CHRISTOFFER HANNEVIG, Bankrupt.

To the Honorable Judges of the United States District Court for the Southern District of New York:

The petition of Henry A. Wise and Thomas P. Hanagan respectfully shows:

The chief asset of the estate of the bankrupt is stock in the Pusey & Jones Corporation. This corporation was a shipbuilding corporation and it has plants at East Gloucester, New Jersey, and at Wilmington, Delaware. It is a Delaware corporation. It has asserted a claim against the United States Government or its agencies, the United States Shipping Board and or the Emergency Fleet Corporation in the sum of fourteen million dollars. The matter 428 has been in litigation for a considerable time. Messrs. Rounds, Seburman and Dwight are in charge of these litigations. At the time of the receivership, your petitioners found that the bankrupt was in control of the Board of Directors. Various interests considered that they should co-operate to control the affairs of the Pusey & Jones Corporation, these interests being the Insurance Departments of the States of New York and Pennsylvania, the Baltimore Dry Docks and Shipbuilding Company, the Hannevig bankrupt estate and others. Conferences have been going on accordingly ever since the receivership, looking toward a re-constitution of the Board of the Pusey & Jones Corporation, so that all interests might be justly represented and so that progress might be made toward a just and equitable distribution of the claims of the Pusey & Jones Corporation against the Government and its agencies. As a final result of these conferences an agreement has been entered into, of which a copy is hereto attached. This agreement was finally signed on Friday, March 18, 1921. Thereafter upon said agreement being signed, the various representative interests all appeared before this honorable Court and the matter was thereupon duly submitted and in open court the agreement was thereupon approved, pursuant to the terms of an order to be entered and an order containing various provisions which are fully set forth in the order annexed to this petition.

Wherefore, your petitioners respectfully pray for the granting of the annexed order. Henry A. Wise, Thomas P. Hanagan, Petitioners.

429 STATE OF NEW YORK,
County of New York, ss:

Henry A. Wise and Thomas P. Hanagan, being duly sworn, depose and says:

That he is one of the petitioners above named; that he has read the foregoing petition and that the same is true to the best of his knowledge, information and belief. Henry A. Wise, Thomas P. Hanagan.

Sworn to before me this 22nd day of March, 1921. [Seal.] Mary E. O'Rourke, Notary Public. Kings County Clerk's No. 49. Kings County Register's No. 2057. New York County Clerk's No. 120. New York County Register's No. 2105.

NOTE.—There is annexed to original affidavit copy of New York agreement of March 18, 1921, same as Exhibit "F" to bill of complaint. Not reprinted here. (See Record, p. 65.)

EXHIBIT C.

United States District Court, Southern District of New York.

In the Matter of CHRISTOFFER HANNEVIG, Bankrupt.

This matter duly came on in open court on Friday, March 18, 1921, and the Court having been fully advised of the matters set forth in an agreement dated March 18, 1921, and a copy of which is attached to the annexed petition, and the Court, after due deliberation, being of the opinion that the interests of this estate and of all other parties require a prompt, just and equitable disposition of all claims of the Percy & Jones Corporation against the United States Government and the United States Shipping Board and the Emergency Fleet Corporation, and the Court finding further that the plans proposed to be carried out pursuant to said agreement should accomplish such a disposition of said matters.

Now, therefore, upon the annexed petition of the Henry A. Wise and Thomas P. Hanagan, the receivers herein, and upon the said agreement, it is, on motion of Saul S. Myers and James N. Rosenberg, attorneys for the receivers herein,

Ordered that said agreement, dated March 18, 1921, a copy of which is hereto annexed, be and the same is hereby confirmed and approved by the Court. It is

Further ordered that the election of a trustee in bankruptcy of the above estate be and the same hereby is stayed for a period of six months from date, as the court is at present advised, but any and all creditors of the above named bankrupt are hereby permitted to present an application of this Court on notice to all persons who have subscribed to said agreement for an earlier trusteeship, should such applying creditors present to the Court reasons therefor. In the event, however, that an earlier trusteeship is so ordered, any or

all of the parties to said agreement shall have the right to
431 withdraw therefrom if they so indicate their desire to withdraw to this Court at the time of the hearing on any such application for an earlier trusteeship. It is

Further ordered that the above named bankrupt and all his agents, servants and attorneys be and they hereby are directed to execute such papers, agreements, resignations, transfers, authorizations, proxies and other documents as may be necessary or proper to carry out the spirit, terms and intention of this order and of the agreement which has hereby been approved, and as may effectually place the affairs of the Pusey & Jones Corporation under the control and management of the Board of Directors, set forth in said annexed agreement. Julius M. Mayer, U. S. D. J. Dated N. Y. March 22, 1921.

AFFIDAVIT OF JAMES BAIRD SIMPSON.

[Filed June 18, 1921.]

STATE OF NEW YORK,

City of New York, County of New York, ss:

James Baird Simpson, being duly sworn, says:

1. That he is a citizen and resident of the State of New Jersey.
2. That he has read the bill of complaint herein verified the ninth day of June, 1921.

3. That Christoffer Hannevig, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State
432 of New York, and until the twenty-second day of February, 1921, its principal office and place of business was at No. 32 Broadway, in the Borough of Manhattan, City of New York, State of New York. That said Christoffer Hannevig, Inc., was incorporated in or about the month of December, 1916. From the date of its incorporation until the twenty-second day of February, 1921, the principal business of said Christoffer Hannevig, Inc., was that of ship brokerage. That from the date of its incorporation until the date of this affidavit one Christoffer Hannevig was the president of said Christoffer Hannevig, Inc., and at all times from the incorporation of said company to the twenty-second day of February, 1921, he was the principal stockholder of said company and the owner and holder of a majority of the issued and outstanding stock thereof.

4. That heretofore and prior to the month of August, 1917, said Christoffer Hannevig brought about the incorporation of the Pennsylvania Shipbuilding Company, which in the year 1917 was a corporation duly organized and existing under the laws of the State of Delaware. That the said company was incorporated for the purpose, among other things, of procuring a shipyard and building ships, and that upon the incorporation of said Pennsylvania Shipbuilding Company said Christoffer Hannevig became the principal stockholder thereof, and at all times until the consolidation of said company into The Pusey and Jones Company, as hereinafter recited, said Christoffer Hannevig was the owner and holder of a major-

ity of the issued and outstanding stock of said Pennsylvania Shipbuilding Company.

433 5. That heretofore and prior to the month of August, 1917, the said Christoffer Hannevig caused and procured the incorporation of the New Jersey Shipbuilding Company, and that in the month of August, 1917, said company was a corporation duly organized and existing under and by virtue of the laws of the State of Delaware. That upon the incorporation of said New Jersey Shipbuilding Company the said Christoffer Hannevig became the owner and holder of the majority of the issued and outstanding capital stock of said Company and continued to be the owner and holder of a majority of said issued and outstanding stock until the consolidation of said company into The Pusey and Jones Company, as hereinafter recited.

6. That prior to December 21, 1917, and for many years The Pusey and Jones Company had been and was a corporation duly organized and existing under and by virtue of the laws of the State of Delaware. That prior to the month of August, 1917, the aforesaid Christoffer Hannevig had become the owner and holder of a majority of the issued and outstanding capital stock of said The Pusey and Jones Company. That under an agreement of consolidation and merger dated December 21, 1917, and recorded in the office for the recording of deeds, etc., in and for New Castle County, in the State of Delaware, in Certificate of Incorporation Record X, Volume 8, 521, the aforesaid Pennsylvania Shipbuilding Company, New Jersey Shipbuilding Company and The Pusey and Jones Company were merged into and became a corporation under the name of The Pusey and Jones Company. That since that date The Pusey and Jones Company has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

434 7. That prior to the month of August, 1917, the aforesaid Pennsylvania Shipbuilding Company had acquired a certain tract of land fronting on the Delaware River, in the State of New Jersey, at Gloucester, on which it had commenced the erection of a plant for the building of ships and on which it had commenced the construction of certain ships which will be more particularly referred to hereinafter. That prior to the month of August, 1917, the aforesaid New Jersey Shipbuilding Company had acquired a tract of land fronting on the Delaware River and adjoining the aforesaid tract of land of the Pennsylvania Shipbuilding Company, and that said New Jersey Shipbuilding Company had prior to the month of August, 1917, commenced the erection of a shipbuilding plant upon said tract of land, but had not begun the construction of any ships. That prior to the month of August, 1917, The Pusey and Jones Company owned a tract of land situate in the City of Wilmington and fronting on the Christiania River, on which it had erected a shipbuilding plant and at which it was engaged in the construction of certain ships.

8. That at the present time the total issued and outstanding preferred stock of The Pusey and Jones Company consists of 47,637

shares of preferred stock of the par value of \$100 each, and 3,868 shares of common stock of the par value of \$100 each, all of which said preferred and common stock is fully paid and non-assessable; and eighteen of the aforesaid shares of common stock are outstanding in six certificates of three shares each and represent qualifying shares for the directors of said company. That 3,850 shares of said common stock and 47,637 shares of said preferred stock issued and outstanding are, as this deponent is informed and verily believes, the property of either the aforesaid Christoffer Hannevig or Henry A. Wise and Thomas P. Hanagan, as receivers in bankruptcy of Christoffer Hannevig, bankrupt. That 15,000 shares of said preferred stock, represented by certificates A-1, A-2 and A-3, for 5,000 shares each, are held as pledge and security for certain debts of said Christoffer Hannevig by the National City Bank or Den Norske Handelsbank as security for a certain debt of the said Christoffer Hannevig. That 7,200 shares of said preferred stock, represented by Certificates A-4, A-10 and A-18, for 5,000, 2,000 and 200 shares respectively, are held by the plaintiff herein as security for certain debts of Christoffer Hannevig. That 20,000 shares of said preferred stock, represented by certificates A-5, A-6, A-13 and A-14, for 5,000 shares each, and 3,850 shares of common stock, represented by certificate 55, are held as collateral by the Baltimore Dry Docks and Shipbuilding Company as security under a certain agreement between the said company and Christoffer Hannevig. That 3,421 shares of the aforesaid preferred stock, represented by certificates A-7, A-8, A-15, A-16 and A-17, for 1,000, 150, 250, 21 and 2,000 shares, respectively, are held by the Insurance Commissioners of the States of New York and Pennsylvania as security for certain obligations of said Christoffer Hannevig. That 2,016 of the aforesaid shares of preferred stock, represented by Certificates A-11 and A-12, for 2,000 and 16 shares, respectively, are held by the Delaware Trust Company of Wilmington, Delaware, under a certain pledge agreement of The Pusey and Jones Company.

9. That on the eleventh day of February, 1921, all of the aforesaid preferred and common stock of The Pusey and Jones Company was owned by Christoffer Hannevig, and that of this deponent's personal knowledge none of the pledgees under the pledges hereinbefore recited, with the exception of the Baltimore Dry Docks and Shipbuilding Company, had attempted to foreclose the loans for which said stock was pledged as aforesaid, nor has any of said stock been sold by any of said pledgees; and that, as deponent is informed and believes, the legal title to all of said stock, preferred and common, was vested in Henry A. Wise and Thomas P. Hanagan, both citizens and residents of the State of New York, who were on that day duly appointed Receivers in Bankruptcy by an order duly entered in the United States District Court, for the Southern District of New York, by Hon. John C. Knox, one of the judges of said court, and who immediately after their appointment as such Receivers duly qualified by filing with the clerk of said court, the bonds required in said order appointing

them as such Receivers, which said bonds have been duly approved by said Court; and the said Henry A. Wise and Thomas P. Hangan have ever since been and now are the duly qualified and acting Receivers of said Christoffer Hannevig. Said order appointing said Receivers was made in a proceeding entitled "In the Matter of Christoffer Hannevig, individually and doing business under the name of Hannevig and Company," a certified copy of which said order is hereto annexed and marked "Exhibit A."*

10. That deponent first became acquainted with Christoffer Hannevig in the month of November, 1916, when deponent was employed by said Hannevig to assist him in the operation of his affairs.

Deponent was associated with said Christoffer Hannevig at the time of the incorporation of Christoffer Hannevig, Inc., 437 aforesaid, and immediately upon the incorporation of said company deponent became secretary thereof and continued as such until the spring of 1920, when deponent became treasurer of said company, in which capacity deponent served until February 4, 1921.

11. That on the twenty-second day of February, 1921, in a proceeding in the United States District Court, for the Southern District of New York, entitled "In the Matter of Christoffer Hannevig, Inc., Alleged Bankrupt," Hon. Martin T. Manton, one of the Judges of said court, made and entered an order appointing Henry A. Wise and one Thomas B. Felder temporary Receivers of the aforesaid Christoffer Hannevig, Inc., a certified copy of which said order is hereto attached and marked "Exhibit B"; and thereafter and on the fourteenth day of March, 1921, the said Christoffer Hannevig, Inc., was duly adjudged and decreed a bankrupt. That said Henry A. Wise and Thomas B. Felder duly qualified as Receivers of said Christoffer Hannevig, Inc., by filing with the Clerk of the United States District Court, for the Southern District of New York, their respective bonds as required by the aforesaid order, which said bonds were duly approved by said court, and said Henry A. Wise and Thomas B. Felder have ever since been and now are the duly qualified and acting Receivers of said Christoffer Hannevig, Inc.

12. That at the time when deponent first became associated with said Christoffer Hannevig in the month of November, 1916, said Christoffer Hannevig had acquired and then had the stock control of the said Pusey and Jones Company, and shortly after deponent became associated with said Hannevig the said Hannevig had acquired the stock control of the Pennsylvania Shipbuilding Company 438 and The Pusey and Jones Company and shortly thereafter deponent assisted said Hannevig in the incorporation of the New Jersey Shipbuilding Company. From November, 1916, until February, 1921, deponent was intimately associated with said Christoffer Hannevig in all of his business transactions, and deponent had the confidence of said Hannevig and occupied the relation to him of his confidential secretary, and as such had during that time physical

*(Exhibit A is also Exhibit 1 of the affidavit of Henry A. Wise.)

possession of substantially all of his securities, and was continuously in consultation with said Hannevig regarding his various business transactions.

13. That in the month of November, 1916, said Christoffer Hannevig owned the majority of the issued and outstanding capital stock of the Bulk Oil Transports, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and also a majority of the issued and outstanding capital stock of the Manss Steamship Corporation, and as the owner of the capital stock of said corporations he controlled the affairs thereof, elected their respective boards of directors and designated the officers thereof from time to time, and in fact operated the affairs of said corporation as if they had been his individual business. That the entire issued capital stock of both of said corporations was outstanding in the names of various persons associated in business with said Christoffer Hannevig, but all thereof was endorsed in blank by the persons in whose names it stood, and the certificates thereof were in my possession in my capacity as confidential man to Christoffer Hannevig.

14. That prior to the third day of August, 1917, the aforesaid Bulk Oil Transports, Inc., entered into certain agreements with The Pusey and Jones Company wherein, among other things,

439 it was provided that The Pusey and Jones Company should build certain ships, according to specifications therein set forth, for said Bulk Oil Transports, Inc., the ships so to be built being designated in said contracts, respectively, as Nos. 1010, 1011, 1012, 1013 and 1014; and wherein it was further provided that said Bulk Oil Transports, Inc., should pay to said The Pusey and Jones Company stipulated sums upon the signing of said contracts and further sums from time to time as the work on said ships progressed.

15. That prior to the third day of August, 1917, the aforesaid Manss Steamship Corporation entered into certain written contracts with the aforesaid New Jersey Shipbuilding Company, wherein and whereby it was, among other things, agreed that said New Jersey Shipbuilding Company should build certain ships for said Manss Steamship Corporation, which said ships were designated, respectively, as Nos. 203, 204, 205 and 206; and wherein it was further provided that said Manss Steamship Corporation should pay to said New Jersey Shipbuilding Company stipulated sums upon the signing of said contracts and further sums from time to time as the work on said ships progressed.

16. That on the third day of August, 1917, neither The Pusey and Jones Company nor the New Jersey Shipbuilding Company had commenced on the construction of any of the ships contracted for under the contracts hereinbefore mentioned.

17. That on or about the third day of August, 1917, the United States Shipping Board Emergency Fleet Corporation, acting under an Executive Order of the President of the United States, dated

July 11, 1917, issued pursuant to the Act of Congress approved June 15th, 1917, addressed a communication to The Pusey and Jones Company, a copy whereof is hereto annexed and marked "Exhibit C," wherein and whereby said United States

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Shipping Board Emergency Fleet Corporation did requisition all power driven cargo carrying and passenger ships above 2500 tons dead weight capacity under construction in the yards of said The Pusey and Jones Company, and certain materials, machinery, equipment, outfit and commitments for materials, machinery, equipment and outfit necessary for their completion; and on or about the same date a similar requisition was served upon the aforesaid New Jersey Shipbuilding Company and the aforesaid Pennsylvania Shipbuilding Company, and from said date until the present time the ship yards and operation of said companies have in fact been under the control of said United States Shipping Board Emergency Fleet Corporation.

18. That subsequent to the third day of August, 1917, and in the months of August, September and October, 1917, said Christoffer Hannevig caused and procured the aforesaid Bulk Oil Transports, Inc., to sell, assign and transfer its aforesaid five contracts with The Pusey and Jones Company in the manner following, to wit: The contract for the construction of ship No. 1010 to Jacob Prebensen, a citizen of Norway; and the aforesaid contract for the construction of ship No. 1011 to C. K. Christophersen, a citizen of Norway; the aforesaid contract No. 1012 to Lars Macland A. S. Maritim; and the aforesaid contracts Nos. 1013 and 1014 to Tryggve Sagen; and during the same period of time said Christoffer Hannevig caused and procured the said Maass Steamship Corporation to sell, assign and

transfer its aforesaid contracts with the New Jersey Shipbuilding Company as follows, to wit: Contract for ship No. 203 to A/S Sorlandske Lloyd, a Norwegian corporation; contract for ship No. 204 to E. & N. Ch. Evensen, citizens of Norway; contract for ship No. 205 to H. Kjersehow, a Norwegian citizen, and the aforesaid contract for ship No. 206 to Harry Borthen, a Norwegian citizen.

19. That in the sale of its aforesaid contracts with The Pusey and Jones Company by the Bulk Oil Transports, Inc., to the aforesaid Norwegians, said Norwegians paid to Christoffer Hannevig a profit on said contracts in addition to the sum of ten per cent, represented by him to have been paid by said Bulk Oil Transports, Inc., to The Pusey and Jones Company at the time of entering into said contracts.

20. That in the sale of its aforesaid contracts with the New Jersey Shipbuilding Company by the Maass Steamship Corporation to the aforesaid Norwegians, said Norwegians paid to Christoffer Hannevig a profit on said contracts in addition to the sum of ten per cent, represented by him to have been paid by said Maass Steamship Corporation to the aforesaid New Jersey Shipbuilding Company at the time of entering into said contracts.

21. As a matter of fact said Bulk Oil Transports, Inc., at the time of entering into the aforesaid contracts with The Pusey and Jones Company had not paid ten per cent. of the contract price on said ships, and at the time when said Maass Steamship Corporation entered into the aforesaid contracts with the New Jersey Shipbuilding

Company it had not paid ten per cent. of the contract price of said ships.

442 22. That by reason of the aforesaid commandeering of the contracts and facilities of The Pusey and Jones Company and the New Jersey Shipbuilding Company by the United States Shipping Board Emergency Fleet Corporation as aforesaid, said The Pusey and Jones Company and New Jersey Shipbuilding Company were not able to and never did perform their respective contracts aforesaid with the Bulk Oil Transports, Inc., and the Manass Steamship Corporation or their assignees; and the said United States Shipping Board Emergency Fleet Corporation did not, as this deponent is informed and verily believes, ever reimburse any of said assignees for any of the moneys paid by them to said Christoffer Hannevig as aforesaid.

23. That in the year 1917 Christoffer Hannevig, Inc., was carrying a large cash balance, and at or about the same time Christoffer Hannevig had a large cash balance. That in or about the summer of 1917 said Christoffer Hannevig directed deponent to transfer from the funds of said Christoffer Hannevig, Inc., to the said The Pusey and Jones Company large sums of money, and also to transfer from the funds of said Christoffer Hannevig to the said The Pusey and Jones Company large sums of money; and that this deponent in compliance with said instructions withdrew from the funds of said Christoffer Hannevig, Inc., and from the funds of said Christoffer Hannevig amounts exceeding \$650,000, which were transferred to The Pusey and Jones Company, which said funds were deposited by The Pusey and Jones Company in its bank accounts and used by it. That at the time of the transfer from the funds of Christoffer Hannevig, Inc., to The Pusey and Jones Company as aforesaid, the said Christoffer Hannevig, Inc., was indebted to said Christoffer Hannevig, and for all such funds so transferred by Christoffer

443 Hannevig, Inc., to The Pusey and Jones Company, the account of said Christoffer Hannevig with Christoffer Hannevig, Inc., was debited, said transfers being in fact made by Christoffer Hannevig, Inc., for the account of said Christoffer Hannevig.

24. That subsequent to the aforesaid transfers of funds to The Pusey and Jones Company as aforesaid, said The Pusey and Jones Company, executed and delivered to Christoffer Hannevig, Inc., the notes of The Pusey and Jones Company, as follows:

First. Note dated July 27, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Second. Note dated August 1, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable four months after date, at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Third. Note dated August 16, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the

sum of Fifty Thousand Dollars (\$50,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Fourth. Note dated August 23, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Twenty-five Thousand Dollars (\$25,000), payable four months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

444 Fifth. Note dated August 29, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Twenty-five Thousand Dollars (\$25,000), payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Sixth. Note dated August 31, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Twenty-five Thousand Dollars (\$25,000), payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Seventh. Note dated September 13, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Seventy-five Thousand Dollars (\$75,000), payable three months after date at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

Eighth. Note dated September 27, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, Inc., for the sum of Fifty Thousand Dollars (\$50,000), payable three months after date, at the Delaware Trust Company, with interest at the rate of five per cent. (5%).

and executed and delivered to Christoffer Hannevig, the note of The Pusey and Jones Company for \$300,000, as follows:

Ninth. Note dated October 1, 1917, made by The Pusey and Jones Company to the order of Christoffer Hannevig, for the
445 sum of Three Hundred Thousand Dollars (\$300,000), payable three months after date at the Delaware Trust Company with interest at the rate of five per cent. (5%).

the said notes being the notes referred to in the bill of complaint herein in paragraph "7" thereof.

25. The aforesaid nine notes were delivered to Christoffer Hannevig and eight of the nine payable to Christoffer Hannevig, Inc., aggregating in the amount of \$350,000, were endorsed by Christoffer Hannevig, Inc., and delivered to Christoffer Hannevig, and from the year 1917, until the month of February, 1920, said eight notes and the aforesaid note of The Pusey and Jones Company to the order of Christoffer Hannevig for the sum of \$300,000, were continuously held by and in the possession of said Christoffer Hannevig, and actually in my custody as confidential secretary to said Christoffer Hannevig.

26. That after the execution and delivery of the aforesaid notes,

as aforesaid, The Pusey and Jones Company, being then engaged in the construction of certain commandeered ships which were being constructed for the benefit of the United States Shipping Board Emergency Fleet Corporation, found itself in need of funds and had to call upon the United States Shipping Board Emergency Fleet Corporation for certain cash advances to pay for materials ordered and to be delivered. The United States Shipping Board Emergency Fleet Corporation, as a condition for the advancement by it of such funds, required of Christoffer Hannevig an agreement that the date of payment of the aforesaid notes should be postponed until after all payments had been made for said materials, for the payment of which said United States Shipping Board Emergency Fleet Corporation was to advance the funds; the object and purpose being that the money advanced by the United States Shipping Board Emergency Fleet Corporation should be applied to the payment for materials to be delivered and not to the retirement of said notes; and accordingly said Christoffer Hannevig caused said notes to be endorsed as will appear from an examination of the originals thereof, and that as so endorsed said notes continued in the possession of said Christoffer Hannevig until February, 1920, as aforesaid.

27. That in the year 1918, The Pusey and Jones Company entered into negotiations with the United States Shipping Board Emergency Fleet Corporation resulting in an arrangement whereby the said United States Shipping Board Emergency Fleet Corporation was to advance to The Pusey and Jones Company the sum of \$5,000,000 for which the said The Pusey and Jones Company was to execute its certain bond to be secured by a mortgage covering all of its properties in the States of Delaware and New Jersey. In connection with these negotiations an agreement was entered into between said The Pusey and Jones Company and the United States Shipping Board Emergency Fleet Corporation, bearing date May 11, 1918, a copy whereof is hereto annexed and marked "Exhibit D." That under and by the terms of said agreement, in clause 22 thereof, it is expressly provided that no part of the funds to be advanced by the United States Shipping Board Emergency Fleet Corporation to The Pusey and Jones Company shall be used in the repayment of any loans theretofore made to The Pusey and Jones Company, New Jersey Shipbuilding Company or the Pennsylvania Shipbuilding Company or to The Pusey and Jones Company after the consolidation and merger hereinbefore mentioned, by either Christoffer Hannevig, Christoffer Hannevig, Inc., Bulk Oil Transports, Inc., 447 Manass Steamship Corporation, or any other company, individual or partnership associated with them until the entire amount of principal of the United States Shipping Board Emergency Fleet Corporation's advances, together with interest thereon, has been paid. Among such debts so excluded is specifically enumerated the amount of \$650,000, represented by the notes referred to in paragraph "7" of the bill of complaint herein; and it is further expressly provided that the payment of said indebtedness of \$650,000 is to be deferred until the entire amount of the mortgage loan of the United States

Shipping Board Emergency Fleet Corporation, together with interest thereon, shall have been paid; and it is further provided by clause 23 of said agreement that The Pusey and Jones Company shall deliver an agreement signed by Christoffer Hannevig, Christoffer Hannevig, Inc., Bulk Oil Transports, Inc., Maass Steamship Corporation and all other associated Hannevig interests, deferring their and each of their claims against The Pusey and Jones Company until the advances made by the United States Shipping Board Emergency Fleet Corporation are fully repaid, or agreeing to accept preferred stock of The Pusey and Jones Company at par in payment of same. Deponent does not know whether said Christoffer Hannevig, Christoffer Hannevig, Inc., Bulk Oil Transports, Inc., and Maass Steamship Corporation, or any of them, ever executed any such agreement as is provided for in the last referred to provision of the agreement between The Pusey and Jones Company and the United States Shipping Board Emergency Fleet Corporation, but it is the fact that said Christoffer Hannevig signed said agreement as president of The Pusey and Jones Company.

418 28. That in the years 1918 and 1919 and until about the month of September, 1919, one C. Frølich Hanssen was employed by The Pusey and Jones Company as its managing director, and as such said C. Frølich Hanssen was frequently in communication with Christoffer Hannevig concerning the affairs of The Pusey and Jones Company and was in frequent communication with deponent regarding all such affairs. That in the year 1918 and while the said C. Frølich Hanssen was the managing director of The Pusey and Jones Company he had charge of the settlement of the accounts between The Pusey and Jones Company and the United States Shipping Board Emergency Fleet Corporation, and was familiar with the aforesaid agreement between the United States Shipping Board Emergency Fleet Corporation and The Pusey and Jones Company, and frequently discussed the terms thereof with said Christoffer Hannevig and deponent. Said C. Frølich Hanssen knew of the transfer of funds from Christoffer Hannevig, Inc., and Christoffer Hannevig to The Pusey and Jones Company, as hereinbefore recited, and of the issuance of the aforesaid nine notes of The Pusey and Jones Company to Christoffer Hannevig, Inc., and Christoffer Hannevig, as hereinbefore recited, and knew of the provision in the agreement between the United States Shipping Board Emergency Fleet Corporation and The Pusey and Jones Company with reference to said debt, and frequently discussed the same with said Christoffer Hannevig and this deponent.

29. That in the month of September, 1919, said C. Frølich Hanssen severed his relations with The Pusey and Jones Company and ceased to be its managing director, and shortly thereafter became associated in business with Hans Karluf Hanssen, the plaintiff
419 in this action, and also became the American representative of the Norwegian citizens and corporations to whom and which the Bulk Oil Transports, Inc., and the Maass Steamship Corporation assigned the nine contracts with The Pusey and Jones Company, as hereinbefore stated; and in this capacity said C. Frølich

Hanssen represented said Norwegians in presenting claims to the United States Shipping Board Emergency Fleet Corporation referring to said nine contracts, and also represented said Norwegian interests in presenting similar claims to Christoffer Hannevig; and that said C. Frolich Hanssen had associated with him in the presentation of such claims to the United States Shipping Board Emergency Fleet Corporation and to Christoffer Hannevig, the plaintiff, Hans Karluf Hanssen.

30. That throughout the year 1919 and into the year 1920 and up to February, 1920, there were frequent conferences between Christoffer Hannevig on the one hand, and Hans Karluf Hanssen and C. Frolich Hanssen on the other hand, with reference to an alleged indebtedness due to said Norwegian interests arising out of the sale of the aforesaid contracts. That in the month of February, 1920, the plaintiff, Hans Karluf Hanssen, came to the city of New York and then and there presented to Christoffer Hannevig a claim for a sum in excess of \$1,200,000, which he, the said Hans Karluf Hanssen, claimed to be due by Christoffer Hannevig to the aforesaid Norwegian interests, which he then and there claimed to represent, and he then and there demanded that said Christoffer Hannevig pay said claim. That Christoffer Hannevig was not able to pay said claim and did not admit the amount of the claim as asserted by said Hans Karluf Hanssen, but on the contrary disputed numerous items thereof. The difference between the amount that he was willing to admit and the amount asserted by said Hanssen amounted to approximately \$200,000. No agreement was arrived at between said Hans Karluf Hanssen, representing said Norwegian interests, and said Christoffer Hannevig.

31. At this time said Christoffer Hannevig owned an equity in a ship known as the "Fire Island," which ship was held by the United States Shipping Board Emergency Fleet Corporation. He transferred all of the equity therein to said Hans Karluf Hanssen as the representative of the aforesaid Norwegian interests, for which said Hanssen allowed Hannevig a credit of \$565,875 on adjusting the balance due by Hannevig to said Norwegian interests. And at or about the same time said Christoffer Hannevig, then having in his possession certificates of stock of The Pusey and Jones Company for preferred stock Nos. A-4, A-10 and A-18, respectively for 5,000, 2,000 and 200 shares, and also having in his possession the aforesaid nine notes of The Pusey and Jones Company aggregating \$350,000, all of which were then long past due, and the payment of which was by the terms of the aforesaid agreement between The Pusey and Jones Company and the United States Shipping Board Emergency Fleet Corporation deferred as aforesaid, delivered said certificates of stock and said notes to said Hans Karluf Hanssen; but before delivering the same said Hans Karluf Hanssen in my presence wrote out in his own handwriting and signed and delivered to said Christoffer Hannevig a paper bearing date February 15, 1920, the original whereof is attached as Exhibit A to the affidavit of Carl Ericson verified June 11, 1921; and said Hans Karluf Hanssen, as representative of said Norwegian interests, then and there received

said certificates of stock and said notes as security for the obligation referred to in said writing signed by him as aforesaid.

451 32. That on the twenty-fourth day of March, 1920, Christoffer Hannevig wrote, signed and delivered to Hans Karluf Hanssen a letter, a carbon copy whereof is hereto attached and marked "Exhibit F," in which said letter Christoffer Hannevig set forth the final arrangements arrived at between himself on the one hand and said Hans Karluf Hanssen on the other hand; and that by the terms of this letter, which was never objected to by said Hans Karluf Hanssen, it will be seen that the balance to be paid by said Christoffer Hannevig was to be paid part in American currency, to wit: \$300,000 and the balance of \$414,980.87 was to be paid in Norwegian kroner at an agreed rate of exchange of 3.244. In other words, it was agreed between the said Hannevig and said Hanssen that a balance of \$865,875 was due and owing to the Norwegian interests represented by said Hans Karluf Hanssen, and it was to secure this balance that the certificates of stock and the notes referred to in Exhibit A to the affidavit of Carl Eriksen were deposited as security; and the said certificates of stock and the said notes have, so far as this deponent is informed, ever since February 15, 1920, been held by said Hanssen in his representative capacity as aforesaid as security for said balance. That deponent of his own knowledge is able to say that neither the said Hans Karluf Hanssen nor any of his principals have at any time since the fifteenth day of February, 1920, brought any suit or suits in law or in equity against the said Christoffer Hannevig to recover the aforesaid balance of \$865,875 or any part thereof; nor has said Hanssen or any of his principals made any demand upon said Christoffer Hannevig, so far as this deponent is informed and believes, for the payment of said balance or any part thereof.

452 33. That by the terms of the agreement as set forth in the letter of March 24, 1920, hereinbefore referred to as Exhibit F, it will be seen that the aggregate amount due upon the claims on the nine contracts aforesaid is agreed to as \$1,261,912.50. This aggregate was arrived at by allowing to Jacob Prebensen on contract of The Pusey and Jones Company on ship No. 1010 the sum of \$216,412.50; to A/S, "Tromp," C. K. Christophersen on ship No. 1011, \$216,412.50; to A/S, "Maritim," Hans Karluf Hanssen, on ship No. 1012, \$195,750; to A/S, "Haug," Hans Karluf Hanssen for ship No. 1013, \$195,750; to A/S, "Mercator," Hans Karluf Hanssen, \$175,087.50; to A/S, "Sorlandske Lloyd," Carl Thorbjørnsen on New Jersey Shipbuilding Company contract No. 203, \$65,625; to H. Kjerschow on ship No. 205, \$65,625; to Harry Borthen on ship No. 206, \$65,625, and to N. Ch. Evensen on ship No. 204, \$65,625, making an aggregate of \$1,261,912.50. As a matter of fact, A/S, Sorlandske Lloyd, Carl Thorbjørnsen is a Norwegian corporation and Christoffer Hannevig is a large stockholder therein. The amount allowed to H. Kjerschow on New Jersey Shipbuilding Company contract No. 205 is an allowance to a partnership, of which partnership Christoffer Hannevig is a member. The amount allowed to Harry Borthen on New Jersey Shipbuilding Company contract

No. 203 is in fact an allowance to a partnership, of which partnership Christoffer Hannevig is a member. And deponent is informed and believes and alleges on such information and belief that the plaintiff, Hans Karluf Haanssen, knows these facts. (Sgd.) James Baird Simpson.

Sworn to before — this 11th day of June, 1921. (Sgd.) Jos. K. Guerin, Commissioner of Deeds, City of New York.

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EXHIBIT B.

At a Stated Term of the United States District Court for the Southern District of New York Held at the Court Rooms Thereof, Post Office Building, Borough of Manhattan, New York City, on the 22nd Day of February, 1921.

Present:—Hon. Martin T. Manton, Judge.

In Bankruptcy. No. —.

In the Matter of CHRISTOFFER HANNEVIG, INC., Alleged Bankrupt.

Whereas, an involuntary petition in bankruptcy has this day been duly filed in the office of the Clerk of this Court, against the above named alleged bankrupt, and it appearing that a subpoena has duly been issued against said alleged bankrupt, as required by law, and upon reading and filing the annexed petition of Osler Wade and a bond of the said petitioning creditor having been duly filed and approved; and it appearing that the granting of this order is necessary to preserve the assets of the above named alleged bankrupt.

Now, it is, on motion of Saul S. Myers, attorney for said petitioning creditor,

Ordered, that Thos. B. Felder and Henry A. Wise be and *he* hereby is appointed temporary receiver of all goods, wares and merchandise, accounts, account books, chattels, choses in action, real estate and all other property of whatsoever nature and wheresoever located, belonging to or being the property of or in the possession of the above named alleged bankrupt; and it is further

454 Ordered, that said receiver give a sufficient bond to the people of the United States in the sum of ten thousand dollars (\$10,000), conditioned for the faithful performance of his duties as such receiver; and it is further

Ordered, that said receiver be and he is hereby empowered forthwith to take possession of all property of whatsoever nature and wheresoever located, now owned by or in the possession of said alleged bankrupt, and of all and any property wheresoever located and of whatsoever nature, being the property of said alleged bankrupt and in the possession of any agent, servant, officer, or representative of said alleged bankrupt, and said receiver is authorized to do all and any such acts and take all and any such proceedings as may enable him forthwith to obtain possession of all and any such property; and it is further

Ordered, that all persons, firms and corporations, including said alleged bankrupt, and all attorneys, agents, officers and servants of said alleged bankrupt forthwith deliver to said receiver all property of whatsoever nature and wheresoever located, including merchandise, accounts, notes and bills receivable, drafts, checks, moneys, securities, and all other choses in action, account books, records, chattels, lands and buildings, life and fire and all other insurance policies in the possession of them, or any of them, and owned by the alleged bankrupt, and said alleged bankrupt is ordered forthwith to deliver to said receiver all and any such property now in the possession of the said alleged bankrupt; and it is further

Ordered, that all persons, firms and corporations including all creditors of said alleged bankrupt, and the representatives, 455 agents, attorneys and servants of all such creditors, and all sheriffs, marshals and other officers, and their deputies, representatives and servants, are hereby enjoined and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer or dispose of or in any way interfere with any property, assets or effects in the possession of the said alleged bankrupt, or owned by said alleged bankrupt and in the possession of any officers, agents, attorneys or representatives of said alleged bankrupt, and all said persons are further enjoined from executing or issuing or causing the execution or issuance or the suing out of any Court, of any writ, process, summons, attachment, replevin, or any other proceeding for the purpose of impounding or taking possession of or interference with any property owned by or in the possession of said alleged bankrupt, or owned by said alleged bankrupt and in the possession of any agents, servants, or attorneys of said alleged bankrupt; and it is further

Ordered, that all persons, firms and corporations be and they hereby are enjoined from disturbing or interfering with gas, telephone service, heat, electrical service, water supply or any other utility of like kind, furnished to said alleged bankrupt, and are hereby enjoined from cutting off or discontinuing the furnishing of any such utilities to said alleged bankrupt except upon three days' notice in writing to said receiver, and all persons, firms or corporations owning real or personal property, including any lands or buildings in which is located any property of said alleged bankrupt, are enjoined pending the further order of this Court, from removing or interfering with any property of said alleged bankrupt. Manton, U. S. C. J.

456 I hereby certify that the foregoing is a true copy and that the bond required has been approved and filed. [Seal.] Alex. Gilchrist, Jr., Clerk.

The attention of receivers is especially directed to instructions to receivers Nos. 2, 3 and 4.

EXHIBIT C.

By virtue of an Act of Congress, approved June 15, 1917, entitled "An Act making appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June Thirtieth, Nineteen Hundred and Seventeen, and for other purposes" and by authority delegated to the United States Shipping Board Emergency Fleet Corporation under Executive Order of the President, dated July 11, 1917, all power-driven cargo-carrying and passenger ships, above 2,500 tons d. w. capacity, under construction in your yard and certain materials, machinery, equipment, outfit, and commitments for materials, machinery, equipment, and outfit necessary for their completion are hereby requisitioned by the United States.

On behalf of the United States, by virtue of said Act and said Order, you are hereby required to complete the construction of said requisitioned ships under construction and will prosecute such work with all practicable dispatch.

The compensation to be paid will be determined hereafter and will include ships, material and contracts requisitioned.

457 You will furnish immediately general plans and detail specifications of the ships requisitioned, and copies of contracts and all supplemental agreements in relation thereto and full particulars as to owner, date of completion, payments made to date, amounts still due and any other information necessary to a fair and just determination of the obligations of the Emergency Fleet Corporation in taking over these ships and contracts.

You will report immediately whether any additional contracts are under consideration and their character and extent, and will not enter into any additional contracts or commitments with respect to merchant tonnage without express authority from this Corporation. (Sgd.) W. L. Capps, General Manager United States Shipping Board Emergency Fleet Corp. Washington, D. C., August 3, 1917.

NOTE.—There was also annexed to original affidavit copy of agreement of May 14, 1918, between The Pusey and Jones Company and United States Shipping Board Emergency Fleet Corporation. Not reprinted here. (See record, p. 209.)

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EXHIBIT F.

March 24, 1920.

Mr. Karluf Hanssen, Vanderbilt Hotel, New York.

DEAR SIR: I beg to acknowledge receipt of your letter of March 23d, in connection with the overpayments and differences in installments on certain Pusey and Jones boats, Wilmington Hull Nos. 1010, 1011, 1012, 1013 and 1014 and New Jersey Hull Nos. 203, 204, 205, and 206, amounting to .. \$1,261,912.50
Plus part of banking expenses 18,943.37

\$1,280,855.87

Paid equity in S. S. Fire Island amount-		
ing to	\$565,875	
Agree to pay further amount of	300,000	
	<hr/>	
	\$865,875	865,875.00
		<hr/>
		\$414,980.87

to be paid in Norwegian Kroner at an agreed exchange of 3.244, making Kr. 1,346,197.94. On this Kroner amount 6% interest is to be added until paid from September 15, 1917 and 6% interest also to be added on the \$300,000 from March 10, 1920 until paid.

When these payments are made, same will cover all claims in connection with overpayments and differences in installments. Yours very truly, ———— CH/R.

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AFFIDAVIT OF CARL ERICSON.

[Filed June 18, 1921.]

STATE OF NEW YORK,
County of New York, ss:

Carl Ericson, being duly sworn, deposes and says:

I reside at No. 60 Wall Street, in the Borough of Manhattan, City of New York, State of New York.

I am forty-eight years of age; I was born in Christiania, Norway, and lived in Norway until I was twenty-three years of age, during all of which time I spoke the language of that country, and I was educated in the schools of Norway.

In the year 1893 I came to the United States and have resided here ever since, and am now a citizen of the United States. Since my arrival in the United States I have studied the English language and now speak and understand the same fully.

During the past fifteen years I have been frequently called upon by many corporations doing business in the City of New York to make translations for them of many documents in the Norwegian language. I have also from time to time acted as interpreter for various persons in interpreting and translating the Norwegian language into the English language. I believe that I am fully competent to translate any document in the Norwegian language into English accurately.

I have had submitted to *be* the document hereto annexed and marked "Exhibit A," which I have read and recognize as a document in the Norwegian language. I have translated said "Exhibit A" into English and have reduced said translation to writing and such written translation is hereto annexed and marked "Exhibit B;" and I hereby certify that according to my best knowledge, information and belief, said "Exhibit B" is a true, correct and complete translation of said "Exhibit A." (Sgd.) Carl Ericson.

Sworn to before me this 11th day of June, 1921. (Sgd.) Jos. K. Guerin, Commissioner of Deeds, City of New York, No. 97.

(Here follows agreement, marked pages 461 and 462.)

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Translation.

I, Christoffer Hannevig, hereby *testifies* that I, today's date have delivered to Mr. H. Karluf Hanssen, as a representative of the nine owners of contracts re Pusey & Jones to whom I owe a considerable amount for overpayment and differences on installments, the shares, etc. numbered below as pledged security for due compensation of the above mentioned expired debt with interest.

The same bonds also shall at the same time serve as security for my likewise expired obligations re Contracts 11, 12, 13 and 14 of Pusey and Jones in accordance with said established Norwegian contracts.

I take the reservation that the said bonds shall be delivered to me for free disposition against cash settlement of the above mentioned liabilities in Norwegian Kroner at the rate of the respective dates of payment together with 6% interest, it being not admitted that I have to pay anything else than the \$565,876 (in dollars) that I have already placed at disposition in regard to the sale of the S/S Fire Island.

The bonds that H. Karluf Hanssen hereby acknowledges to have received as security are:

- 3 Certificates #21, 22, 19 Jefferson Ins. Co. covering : 1,160 shares.
- 2 Certificates #20, 21 Liberty Marine Ins. Co. covering 1,000 "
- 3 Certificates #20, 21 North Atlantic Ins. Co. covering : 1,000 "
- 4 Certificates #A4, A10, A18 Pusey & Jones covering : 7,200 "

New York City, February 15, 1920. (Sgd.) H. Karluf Hanssen.

464 Today's date has further been deposited under the same terms:

- 1. Pusey & Jones' note to order Christoffer Hannevig, Inc. 4 m from 27/7/1917 amount \$50,000
- 2. Pusey & Jones' note to order Christoffer Hannevig, Inc. 4 m from 1/8/1917 amount \$50,000
- 3. Pusey & Jones' note to order Christoffer Hannevig, Inc. 4 m from 16/8/1917 amount \$50,000
- 4. Pusey & Jones' note to order Christoffer Hannevig, Inc. 4 m from 23/8/1917 amount \$25,000
- 5. Pusey & Jones' note to order Christoffer Hannevig, Inc. 3 m from 29/8/1917 amount \$25,000
- 6. Pusey & Jones' note to order Christoffer Hannevig, Inc. 3 m from 31/8/1917 amount \$25,000
- 7. Pusey & Jones' note 3 m from 13/9/1917 to the order Christoffer Hannevig, Inc. amount \$75,000

8. Pusey & Jones' note 3/m from 27 9/1917 amount ..	\$50,000
9. Pusey & Jones' note to the order Christoffer Hannevig 3/m from 1/10/1910, amount	\$300,000
	<hr/> \$650,000

(Sgd.)

H. KARLUF HANSSEN.

465 **REBUTTAL AFFIDAVIT OF JOHN J. MASON.**

[Filed June 20, 1921.]

STATE OF DELAWARE,

County of New Castle, ss:

I, John J. Mason, being duly sworn according to law, depose and say:

I am the same John J. Mason who verified an affidavit on June 13, 1921, for filing in the above cause on behalf of the complainant.

I have been shown and have examined and consider- the two affidavits of Clarence B. Lynch, filed June 18, 1921, on behalf of The Pusey and Jones company. Attached to one of the affidavits of Clarence B. Lynch is a document entitled "The Pusey and Jones Company, Wilmington, Delaware, Revised Balance Sheet—April 30, 1921." This so-called "Revised Balance Sheet" sets forth an excess of assets over liabilities of \$1,640,891.11, after giving effect to the award of the United States Shipping Board Emergency Fleet Corporation, dated March 13, 1920, for the completion and delivery of the requisitioned ships, and before providing for any Federal taxes, and estimating the value of the plant and inventory of material and supplies at 50 per cent. of their book value.

I have carefully checked the items of assets and liabilities shown in the document referred to, and in reply thereto state that in my opinion it should show an excess of liabilities over assets amounting to the sum of \$2,173,320.63.

This difference is explained as follows:

466 Excess of assets over liabilities as shown on the so-called Revised Balance Sheet of April 30, 1921	\$1,640,891.11
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Deduct:

a. Depreciation included in the cost of construction of E. F. C. vessels	1,925,701.06
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Leaving an excess of liabilities over as- sets of	284,809.95
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Add:

b. To this excess should be added the item shown under the caption "Quick Assets," entitled "Machinery Contracts over and above payments rec'd on account," of.....	233,762.38
Making an excess of.....	\$518,572.33

before taking into consideration the probable value of the plants.

c. Real estate and improvements, etc. have been set up at 50 per cent. of book value, or.....	\$4,651,373.67
Less probable realization value estimated at 25 per cent. of the cost value of \$11,985,501.50, or	2,996,625.38
	1,654,748.29
Making a total excess of liabilities over assets, before providing for any Federal taxes, of.....	\$2,173,320.62

The foregoing differences arise from the following facts. Item 467 a. Depreciation is included in the cost of construction of ships in the sum of \$1,925,701.06. It is erroneous to include in the item "Cost of construction of E. F. C. vessels delivered and accepted plus cost of cancelled vessels," noted on the so-called revised balance sheet at \$50,905,027.61, an item of depreciation, as an amount of \$1,375,000 for depreciation has been included in the item "Award for just compensation by the U. S. Shipping Board Emer. Fleet Corporation, March 13, 1920," "after deducting the resale profits" of \$3,418,238. The result of including the above item of \$1,925,701.06 in the item on the so-called revised balance sheet of \$50,905,027.61 is a repetition or duplication of the charge to the Fleet Corporation for depreciation. This conclusion is clearly shown by an examination of pages 22 and 23 of Exhibit A annexed to the affidavit of Frederic D. McKenney filed by The Pusey and Jones Company June 18, 1921, and by reference to the schedules supporting the balance sheet sent out by the company as of April 30, 1921, and referred to by Mr. Lynch in his affidavit.

Item b. There is shown on the so-called revised balance sheet under the caption of quick assets an item entitled "Machinery contracts over and above payments received on account," \$233,762.38. Again referring to the balance sheet sent out by the company as of April 30, 1921, there is shown under the caption of Current Assets the item "Expenditures on paper making machinery, \$1,044,388.04," and "Jobbing orders in process, \$21,916.40," making a total of

\$1,066,304.44, from which has been deducted advance payments on paper-making machinery and jobbing orders of \$832,542.06. As these amounts are the gross totals of all contracts, both as to work in process and advances under the contract, the actual status of this matter cannot be ascertained without examining the condition of each contract, the work in process as compared with the advances.

468 Item c. The value of the plant has been set up on the so-called revised balance sheet at 50 per cent. of the book value, or \$4,651,373.67. I have estimated the probable realization value of the plant at 25 per cent. of the cost of \$11,986,501.54, or \$2,996,625.38. This estimate is based upon my knowledge of the cost of constructing the plant, discussion with various engineers in regard to increased war cost, and from the study of treatises prepared by Societies of Engineers as to amortization and depreciation of ship-building plants built in war times, and offers made for the purchase of the plant in the last two years.

I have examined and considered the various balance sheets made by the company. From the knowledge thus gathered, and my familiarity with the books and accounts of the company, I state the liabilities of The Pusey and Jones Company to include the following:

1. Advances by Emergency Fleet Corporation for plant construction and working capital to April 30, 1921.....	\$6,978,509.72	
Accrued interest on these advances to April 30, 1921.....	634,483.81	
	<hr/>	\$7,612,993.53

(\$5,000,000 of this is secured by mortgage given by The Pusey and Jones Company to the Emergency Fleet Corporation.)

469 2. Nine notes of The Pusey and Jones Company now held by H. Karluf Hanssen	650,000.00	
Interest on same to April 30, 1921, as shown by balance sheet.....	116,354.04	
	<hr/>	\$766,354.04

3. Mortgage to David Baird on Gloucester plant, past due	150,000.00	
4. Accounts payable	64,703.85	
5. Accrued salaries, wages, insurance, etc.....	149,493.40	
6. Estimate of amount of interest due creditors....	100,000.00	
7. Estimate of amount for purchase of trolley loop..	23,443.50	

8. Judgment of Baltimore Dry Docks and Ship Building Company	800,125.00
(Accrued interest on same) .....	.....

Total liabilities outstanding and unpaid.. \$9,667,113.32

Available assets with which to liquidate the the above liabilities, as follows:

1. Cash in bank and on hand.....	\$155,519.84	
2. U. S. Government Liberty Bonds.....	3,300.00	
3. Accounts receivable	193,925.14	
4. Notes receivable	187,461.48	
	<hr/>	
Forward	540,206.46	

470 Brought forward \$540,206.46 \$9,667,113.32

5. Deposits in mutual insurance companies	72,656.03	
6. Materials and supplies at 50 per cent. of book value.....	605,559.02	
	<hr/>	
		1,218,421.51

Excess of liabilities over available assets before considering the value of the plants..... 8,448,691.81

The company plants are carried on the books at..... \$9,258,536.95

And a dredge, shown on books at... 44,210.38

Total \$9,302,747.33

I observe that Mr. Coxe in his affidavit values the plants at \$4,500,000, and Mr. Lynch has set up the value at \$4,651,373.67. In my judgment and for the reasons heretofore stated under "C," I have estimated the value to be realized from the sale of the plants at 2,996,625.38

Thus leaving liabilities in excess of assets of..... \$5,452,066.43

In the latter statement of assets and liabilities the claim of The Pusey and Jones Company against the United States Shipping Board Emergency Fleet Corporation has been disregarded, as it is a matter of entire uncertainty that sum will be ultimately received and when such sum will be received by The Pusey and Jones Company. The present situation as to this claim is represented by the following statement, viz.:

471 *Claim of Company Against United States Shipping Board
Emergency Fleet Corporation.*

Credits:

Cost of construction of vessels delivered and accepted
plus cost of cancelled vessels, as per balance sheet
of April 30, 1921..... \$50,905,029.61

Less:

Amount of depreciation included therein as shown
on schedules attached to balance sheet of April 30,
1921 1,925,701.06

48,979,328.55

Award of just compensation by United States Ship-
ping Board Emergency Fleet Corporation, dated
March 13, 1920 3,418,238.00

Total charges \$52,397,564.55

Creditors:

Cash advances by Emergency Fleet
Corporation to Company, as
shown by balance sheet of April
30, 1921 \$43,993,329.22

Cash advances by former owners of
requisitioned ships 5,014,137.50

Total credits 49,007,466.72

Balance \$3,390,097.83

472 I have read and considered the statement of The Pusey
and Jones Company showing advances by the Emergency
Fleet Corporation to it, annexed to the affidavit of Mr. Lynch.
Since August 3, 1917, the Fleet Corporation has furnished practi-
cally all of the funds of The Pusey and Jones Company, both for the
construction of plant, building of ships and working capital. In
the fall of 1917 it advanced certain moneys up to approximately
\$425,000, which were designated as for plant and ship construc-
tion. On or about May 14, 1918, it began to advance moneys for
plant construction, working capital, and to pay off company's notes
when the same matured, not to exceed \$5,000,000 for plant and
working capital, to which would be added the amount of the notes
as paid and the necessary cost of building ships. These advances
on April 30, 1921, as shown by the balance sheet of the company
of that date, aggregated \$50,971,838.94. From my experience
with The Pusey and Jones Company I know that all through the
latter part of 1918 there were disputes with the Emergency Fleet

Corporation's auditors as to the amount of the advances, and at various times the Emergency Fleet Corporation discontinued making any advances to the company with consequent embarrassment to the company. This situation reached a climax in the early part of 1919 when there had accumulated and were unpaid liabilities of the company in excess of \$3,000,000. As a result of this situation proceedings were taken in the courts of New Jersey seeking the appointment of receivers for The Pusey and Jones Company. After many conferences and lengthy discussions and sundry audits of the accounts both of The Pusey and Jones Company and of the Emergency Fleet Corporation, the Emergency Fleet Corporation
473 made further advances to the company of \$2,750,000 which was used by the company in paying off its creditors. Shortly thereafter an arrangement was made with the Emergency Fleet Corporation that The Pusey and Jones Company would be advanced certain moneys as working capital for manufacturing purposes other than ship construction and on account of general expenses, with an understanding that when the manufactured products were sold and the proceeds collected such collections would be returnable to the Emergency Fleet Corporation.

In the latter part of 1919 there were further rumors of receivership proceedings and actions on account of interest due, etc. At that time the Emergency Fleet Corporation's representative, who was Treasurer of The Pusey and Jones Company, took over the cash on hand, liberty loan bonds and notes receivable, and the funds thus taken were charged on the books of the company against the advances made by the Emergency Fleet Corporation. I understand that at the present time there is some banking arrangement contrary to the method provided in the by-laws of The Pusey and Jones Company, which is that certain designated banks should be the custodians of the company's funds, and that such funds should be deposited in the name and to the credit of the company, subject to checks signed and countersigned by two officers of the company. That the funds that should properly be deposited in the depositories of the company and subject to checks drawn by two officers of the company are deposited in an account controlled entirely by the representative of the Emergency Fleet Corporation. In 1919 The Pusey and Jones Company lost contracts for three ships owing to its lack of financial capital and its dependency on the Emergency Fleet Corporation for working capital and its agreements therewith. It was even unable
474 to get a bond for the faithful performance of its work except at an exorbitant charge. This condition of affairs has not been relieved and the same embarrassment continues to this time.

I have read the affidavit of Mr. W. G. Coxé that the business of The Pusey and Jones Company in the making and repairing of paper-making machinery has continuously increased until it is now on a substantial and profitable basis. In reply to this statement I would say that the diminution in the number of employees would indicate a diminishing and not an increasing business, as will appear from the pay-roll exhibit submitted by the company and attached

hereto. There was a gradual decrease from 928 men on September 11, 1920, with a weekly payroll of \$25,880, to 421 men on January 11, 1921, with a weekly payroll of \$12,201.19, showing a diminution of approximately 50 per cent. The balance sheets sent out by the company show a diminution of business during the last year, as follows: The cost of work in process on April, 1920, was \$1,478,503; on December, 1920, \$1,218,413; and on April 30, 1921, it was \$1,066,304. This conclusively shows that the business of The Pusey and Jones Company in the paper-making machinery business and jobbing orders has been gradually diminishing during the past year.

I have read, examined and considered a list of annual salaries paid to the executive and administrative officers of the company in force June 15, 1921, amounting to \$129,280, which list I annex to this affidavit. Under conditions as they exist today this is an exorbitant and unreasonable expenditure for salaries. (Sgd.) John J. Mason.

Subscribed and sworn to before me this twentieth day of June, A. D. 1921. [Seal.] (Sgd.) Edmund S. Hellings, Notary Public.

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The Pusey and Jones Company.

Executive and Administrative Payroll One-half Month Ending June 15th, 1921, Gloucester Yards.

Name.	Title.	Monthly rate.	Semi- monthly rate.	Net amount paid.
1. William G. Coxé.....	Vice Pres. and Gen'l Mgr.	\$1,500.00	\$750.00	\$750.00
1. Laurence Leonard.....	Treasurer	1,000.00	500.00	500.00
1. R. J. Cannon.....	Assistant Treasurer	416.67	208.34	208.34
1. C. S. Frishmuth.....	Comptroller	416.67	208.34	208.34
1. Chester N. Farr, Jr.....	Secretary	625.00	312.50	312.50
20. Daniel Brown	Chief Draftsman	416.66	208.33	208.33
30. I. S. Schlesinger.....	Electrical Engineer	350.00	175.00	175.00
		<hr/>	<hr/>	<hr/>
		\$4,725.00	\$2,362.31	\$2,362.51

No changes in payroll.

The Pusey and Jones Company.

Executive and Administrative Payroll One-half Month Ending June 15th, 1921, Wilmington Yard.

Name.	Title.	Monthly rate.	Semi-monthly rate.	Net amount paid.
Clarence B. Lynch.	Assistant Treasurer	\$450.00	\$225.00	\$225.00
G. L. Coppage.	Production Manager	458.33	229.17	229.17
Wm. Stewart Ayars.	Chief Estimator	416.67	208.34	208.34
A. C. Spiegelhalter.	Plant Manager	458.33	229.16	229.16
C. Stewart Lee.	Manager of Sales	600.00	300.00	300.00
William H. Kinn.	Superintendent	333.33	166.67	166.67
Charles W. Pusey.	Inspection Engineer	250.00	125.00	125.00
Thos. S. Lee Horsey.	Safety Engineer	250.00	125.00	125.00
James Bradford	Purchasing Agent	375.00	187.50	187.50
H. Warren Cornelius.	Material Agent	300.00	150.00	150.00
Edward A. Cain.	Transportation	300.00	150.00	150.00
Charles Spiegelhalter	Secy. to Vice President.	350.00	175.00	175.00
George E. Sands.	Auditor	300.00	150.00	150.00
Ralph S. Johnston.	Sales Agent	300.00	150.00	150.00
Harvey G. McDowell.	Sales Engineer	250.00	125.00	125.00
Howard R. Cann.	Chief Paper and Gen'l Squad.	281.66	140.83	140.83
James McAnally.	Foundry Superintendent	375.00	187.50	187.50
No changes in payroll.		\$6,048.32	\$3,024.17	\$3,024.17

Record from U. S. Dist. Court.

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Wages Paid.

Week ending—		No. employees, Wilmington.	Wil.
Sept.	11, 1920	928	25,880.82
"	18, "	886	28,923.03
"	25, "	807	24,539.57
Oct.	2, "	766	21,209.30
"	9, "	767	23,568.84
"	16, "	771	24,099.16
"	22, "	720	21,292.40
"	29, "	760	24,817.39
Nov.	6, "	731	21,662.19
"	13, "	738	23,745.97
"	20, "	751	24,019.16
"	27, "	740	20,860.99
Dec.	4, "	741	24,703.62
"	11, "	731	24,213.70
"	18, "	727	23,784.63
"	25, "	718	21,493.54
Jan.	1, 1921	698	20,200.81
"	8, "	661	19,516.73
"	15, "	642	19,195.90
"	22, "	621	19,243.23
"	29, "	605	18,844.24
Feb.	5, "	603	18,382.52
"	12, "	595	18,888.38
"	19, "	604	18,761.48
"	26, "	592	16,117.34
Mar.	5, "	581	17,774.20
"	12, "	578	18,328.12
"	19, "	555	17,684.44
"	26, "	526	16,803.00
Apr.	2, "	514	16,270.89
"	9, "	503	14,572.25
"	16, "	476	13,770.60
"	23, "	451	12,967.59
"	30, "	417	12,429.09
May	7, "	429	12,376.41
"	14, "	398	12,148.00
"	21, "	401	11,192.51
"	28, "	375	10,877.43
June	4, "	404	10,148.73
"	11, "	421	12,201.19

763,812.51

478 **REBUTTAL AFFIDAVIT OF F. W. G. UNGER
VETLESEN.**

[Filed June 20, 1921.]

STATE OF DELAWARE,
New Castle County, ss:

I, F. W. G. Unger Vetlesen, being duly sworn according to law, depose and say, that I am the same F. W. G. Unger Vetlesen who verified an affidavit on the fifteenth day of June, 1921, for filing in the above cause on behalf of the complainant.

I have read the affidavits filed on behalf of the defendant in this cause on June 18, 1921, and desire to enlarge on the statements contained in my former affidavit. In the affidavit of W. G. Coxe, vice-president of The Pusey and Jones Company, he states that he is not of opinion that the liquidating value of the Gloucester plant today is that of the real estate as such plus the machinery and equipment as second-hand machinery and equipment or scrap. My opinion as expressed in my former affidavit concurred with that of Mr. Coxe some eight or ten months ago when discussions took place between Mr. Coxe and myself regarding the salable or marketable value of the Gloucester properties. Since that time shipbuilding yards have grown to be a drug on the market, not only in this country, but all over the world. A shipyard today can hardly be sold as such at any price and can be called with justification a "white elephant." There have been to my knowledge practically no new contracts for the building of ships placed on the Atlantic Coast since the first day of January of this year. I attach hereto a list of the shipyards in the Delaware River district which are idle or closed down and a few which are open and operating to complete contracts which they obtained prior to January 1st of this year. As regards values

479 of tonnage today, Samuels of London, the leading and most well-known ship brokers in England, sold some ten days ago a modern 5,000-ton cargo steamer for less than thirty dollars (\$30) d. w. t. This is below the cost of new ships in Europe before the war. I can further state that I have been approached by European owners to sell the following new ships: 3-800 d. w. t. cargo ships; 1-7,000 d. w. t. cargo ship; and 1-6,000 d. w. t. cargo ship for about forty-five dollars (\$45) per d. w. t., delivered in the United States. These prices no yard in the United States or in the United Kingdom can duplicate today. The ships built at the Gloucester yards of The Pusey and Jones Company, under a very efficient management, were at a cost of some one hundred thirty dollars (\$130) d. w. t., which stood out in comparison with other yards on the Atlantic Coast as very good.

My only deduction from the above, which I believe is true and correct, is that a shipyard of the character of the Gloucester yard of The Pusey and Jones Company, which has been built at high cost, should be liquidated instead of waiting for a revival of the ship-

building industry, which is very remote, unless there should be another conflagration of world wars between big nations.

I disagree with Mr. Cox in his statement that the Gloucester yard of The Pusey and Jones Company has value for immediate use as a repair plant. The value of that yard as a repair plant today is very small. A considerable amount of additional capital would have to be invested at that yard to make it a useful repair yard. Several estimates have been furnished the management of The Pusey and Jones Company for the purpose of making the yard useful as a repair yard, ranging from one million two hundred thousand dollars (\$1,200,000) to two million five hundred thousand dollars (\$2,500,000), to provide the necessary floating docks, equip-

480 ment, etc. The advisability of a floating dock or floating docks at Gloucester is somewhat dubious, because of the location which such docks would have to be given and the expense in keeping the same in operation. The plant is located in a bend of the Delaware River where a strong tide is running, which would make necessary continuous dredging. Floating ice in the spring of the year would greatly endanger and harm operations. The Philadelphia Navy Yard, in the vicinity, is in a somewhat better position and decided to build a graving dock. This is a very expensive undertaking and would be suicidal at Gloucester.

At the Wilmington yard the facilities for repair work are very limited and a graving dock would have to be built. The Harlan & Hollingsworth plant of the Bethlehem Steel Corporation, in Wilmington, would undoubtedly take care of what business happened to be in the vicinity, they having a graving dock built at a cost far below what one could be built for today.

Competition in the shipbuilding repair business today is very keen and numerous plants and yards have been equipped for this purpose in the last two years and they are all fighting today for their existence, trying to keep their heads above water.

Considering the facts, conditions, relations and interests of The Pusey and Jones Company, its shareholders, creditors and the relation of this company to the affairs and interests of its former, now bankrupt, president, Christoffer Hannevig, and the strangling and killing grip which the United States Shipping Board has over The Pusey and Jones Company, I am of opinion that the best solution of the situation for the protection of creditors and other interests is the appointment of receivers to liquidate the shipbuilding interests

481 of the company. If the Wilmington plant, with its paper-making machinery business, is a profitable undertaking, that business could no doubt be disposed of when it ceases to be encumbered as it is today. (Sgd.) G. Under Vetlesen.

Subscribed and sworn to before me this twentieth day of June, A. D. 1921. (Sgd.) Edmund S. Hellings, Notary Public. [SEAL.]

Ship Yards Closed Down, Delaware River District, as Regards New Construction of Ocean-going Tonnage.

Hog Island.

Harlan & Hollingsworth Corporation.

Pusey and Jones Company, Wilmington.

Pusey and Jones Company, Gloucester.

Harriman Plant, Bristol.

Traylor Plant, (Wooden Yard).

Finishing Contracts (No New Work Since January 1, 1921) Not Including Navy Work.

Cramps Shipbuilding Company (Dry Docks open).

Sun Shipbuilding Company (Dry Docks under construction).

New York Shipbuilding Company.

Chester Shipbuilding Company.

482 **REBUTTAL AFFIDAVIT OF HANS KARLUF
HANSEN.**

[Filed June 20, 1921.]

STATE OF DELAWARE,

New Castle County, ss:

I, Hans Karluf Hansen, being duly sworn according to law, depose and say that I am the complainant in the above-entitled cause and the lawful holder of the shares of stock and promissory notes set forth in the bill of complaint filed therein, and that I acquired said stock and notes in the following manner:

In the fall of the year 1917 Jacob Prebensen, Jr., H. Kjerschow, Harry Borthen, E. and N. Chr. Evensen, all subjects of the King of Norway and residing therein, and the Norwegian limited companies, "Tromp," "Maritim," "Haug," "Mercator" and "Soerlandske Lloyd," being the nine purchasers hereinafter mentioned, each bought a contract for a steamship, each of four of which steamships were of 5,000 deadweight tons and were to be built at the shipyard of the New Jersey Shipbuilding Company at Gloucester, New Jersey (now owned by The Pusey and Jones Company), and each of the remaining five steamships were of 4,350 deadweight tons and were to be built at the shipyards of The Pusey and Jones Company at Wilmington, Delaware, making a total of nine ships. These contracts were originally made and closed with the said New Jersey Shipbuilding Company and The Pusey and Jones Company at a price which varied from one hundred seventy-five dollars (\$175) to one hundred eighty-five dollars (\$185) per deadweight ton. These contracts for the building of these vessels were sold to the aforesaid parties respectively by Christoffer Hannevig, and when

so sold in Norway the said Christoffer Hannevig represented
483 to the purchasers respectively that the original contract price
for the building of each of said vessels by the said New Jersey Shipbuilding Company and The Pusey and Jones Company was to be one hundred forty dollars (\$140) per deadweight ton. On or about the time of the sale the said Christoffer Hannevig collected from the purchasers of said contracts the difference between the selling price and the original contract price above mentioned and also certain amounts which were represented by Christoffer Hannevig as having been paid to the New Jersey Shipbuilding Company and The Pusey and Jones Company, amounting to 10 per cent of the original contract price, as the first installment due and paid at the time of the signing of the original contracts for the building of these ships. It was thereafter learned that the contracts with The Pusey and Jones Company for the building of the steamships that were to be built at the shipyards at Wilmington, Delaware, only called for the payment of 5 per cent as a first installment and not the payment of 10 per cent as represented by Mr. Hannevig and as Mr. Hannevig retained out of the installments to the New Jersey Shipbuilding Company for the building of the vessels to be built by it at Gloucester, New Jersey, about 5 per cent of the installments to that company, the said Christoffer Hannevig retained in the aggregate a sum of about one million two hundred sixty-one thousand nine hundred twelve dollars and fifty cents (\$1,261,912.50), which sum represents the over-payment and differences on the several contracts above mentioned which was unjustly collected by Christoffer Hannevig. That in the fall of the year 1917, when the above-mentioned contracts were purchased as aforesaid, all the parties to the transactions were then in Norway and the original contracts with
484 The Pusey and Jones Company and the New Jersey Shipbuilding Company for the building of the vessels were not in Norway, but on the contrary, were in the United States and were not available for inspection by the Norwegians above mentioned nor could they be safely forwarded from the United States to Norway on account of submarine warfare. Consequently, the Norwegian purchasers above mentioned had no knowledge with reference to the over-payments above mentioned until after the recent war. During the year 1919 strong requests were made to Christoffer Hannevig for reimbursements. No satisfactory response to these requests was offered and it was then decided in December, 1919, by all the purchasers of the said contracts to send this affiant to the United States as the representative of all of the said purchasers with power and authority to collect the over-payments through legal steps if necessary. This affiant, Hans Karluf Hanssen, was then and is now the general manager of three of said limited companies, namely, "Maritim," "Haug" and "Mercator," and the nine purchasers above named duly authorized and elected your affiant, Hans Karluf Hanssen, as the representative of the nine parties interested and, pursuant to the above-mentioned decision, on the twenty-eighth day of December, 1919, your affiant, Hans Karluf

Hanssen, sailed from Norway to the United States of America. When arriving in the United States in the month of January, 1920, your affiant found that the financial position of Christoffer Hannevig was far from satisfactory, and that as a matter of fact, he was in serious difficulties. I called on Christoffer Hannevig and demanded payment of the amounts of over-payments above mentioned and he stated that he was unable to meet the demands.

From inquiries that I made I learned that Christoffer Hannevig had an interest in two vessels known as the "Rock Island" and "Fire Island," which he had taken over from the United States
485 Shipping Board Emergency Fleet Corporation on an installment basis. This interest amounted to approximately five hundred sixty-five thousand dollars (\$565,000). Christoffer Hannevig promised to transfer his interest in these ships as a part payment of the amounts due the Norwegian purchasers on account of the over-payments mentioned. On the thirteenth day of February, 1920, in New York City, New York, by reason of the remainder still due and unpaid, Christoffer Hannevig delivered to your affiant, Hans Karluf Hanssen, as the representative of the nine contract holders above mentioned, the shares of stock and promissory notes set forth in the bill of complaint, among other things, as will more fully appear by a photostatic copy of the original writing which accompanied the delivery of said shares of stock and notes with the translation thereto annexed and also a copy of a letter from Christoffer Hannevig to your affiant, dated March 25, 1920, confirming that the shares and notes so deposited were to serve as security for the amounts therein named, all of which are annexed to this affidavit and marked "Exhibit A."

At the time of the delivery of said shares and notes by Christoffer Hannevig to me I pointed out to Mr. Hannevig that the balance of his indebtedness was due and that no extension whatsoever was granted by reason of the receipt of these shares of stock and promissory notes. Thereupon, he advised me that he expected to be able to pay the same in the near future.

I returned from the United States to Norway in April, 1920, to make my report. During that year repeated requests and demands for payment were made upon Christoffer Hannevig, but they were all of no avail.

As reports repeatedly arrived in Norway informing us that the condition of Christoffer Hannevig and his interests were far
486 from satisfactory, it was decided that as I was going to the United States of America as a member of the Governmental Commission from Norway, I could at the same time continue to press the claims of the nine contract owners above mentioned and endeavor to effect a settlement. I proceeded from Norway to the United States, arriving in the latter place about the middle of April, 1921. On my arrival I was informed that the Baltimore Dry Docks and Shipbuilding Company had procured a judgment against The Pusey and Jones Company and that, by reason of this judgment, it would obtain a prior claim on the property of The Pusey and Jones

Company, which would jeopardize the interests of my associates and myself. I, therefore, decided to bring this suit to enforce our rights and prevent further injustice.

I present herewith the original power of attorney authorizing me, among other things, to take all legal steps which I may deem necessary in the premises, which power of attorney is duly authenticated, together with a correct translation of the original document. (Sgd.) H. Karluff Hanssen.

Subscribed and sworn to before me this twentieth day of June, A. D. 1921. [Seal.] (Sgd.) H. C. Mahaffy, Jr., Notary Public.

(Here follows agreement, marked pages 487 and 488.)

EXHIBIT "A."

139 Broadway, New York.

The undersigned, Christoffer Hannevig, hereby acknowledges this date that he has delivered to Mr. H. Karluff Hanssen, as representative of the nine contract holders at the Pusey & Jones Co. which have a certain amounts owing to them for overpayments and differences on the installments. The shares etc. given below as security for correct payments for the obligations with interest which are now due.

The given securities shall secondary serve as security for the obligations which have fallen due in respect to the contracts No. 11, 12, 13 and 14 at the Pusey & Jones Co. in respect to return payments in lieu of these numbers with the corresponding Norwegian contracts.

I reserved that the deposited values shall be delivered to me and can be disposed of by me free of any incumbrances on condition, that I pay my obligations in Norwegian currency at an exchange taken at the respective installments dates with an interest of 6% and this shall not acknowledge that I am bound to pay anything else except \$565,875.00 which I have already paid out in taking over the S. S. "Fire Island" in American Dollars.

The deposited shares and securities which the undersigned Karluff Hanssen acknowledges to have received as security on the aforesaid stipulated conditions are the following:

Company.

Shares, Certificate-	221-22-29, in Jefferson Ins. Co.	1,160 shares
"	" 20-21, in Liberty Marine Ins.	1,000 "
"	" 20-21, in North Atlantic Ins.	1,000 "
"	" 2a-4; a-10; a-18; Pusey & Jones Co.	7,200 "

New York City, February 13, 1920.

(Sign-)

CHRISTOFFER HANNEVIG.
H. KARLUFF HANSSEN.

Jeg blir notarielliter bevidnet at Hr. Karl A. Thorsbjørnsen, C. P. Christophersen,
1ste underskrevet dette dokument For bevindelsen i den kgl. H. Kassen, H. Kassen
beholdt til Statskassen ved stempelbetale 2-10 kr. 50 ør. Sammen og Henry
Kristiania Byfoged og Notarialkontor den 20 December 1919.

Karl A. Thorsbjørnsen
C. P. Christophersen



There is further deposited under the same conditions:

1. Pusey & Jones note to the order of Christoffer Hannevig, Inc., 4/m. av. 27/7 1917, amount.....	\$50,000
2. Same name—4/m. av./1/8 1917, amount.....	50,000
3. Same name—4/m. av./16/8 1917, amount.....	50,000
4. Same name—4/m. av./23/8 1917, amount.....	25,000
5. Same name—3/m. av. 27/8 1917, amount.....	25,000
6. Same name—av. 31/8 1917, amount.....	25,000
7. ——— 3/m. av. 13/9 1917, amount.....	75,000
8. Same name— 3/m./27/9 1917, amount.....	50,000
9. Same name 3/m. av. 1/10 1917 amount.....	300,000

Making a total of \$650,000

(Sgd.)

CHRISTOFFER HANNEVIG.

March 25, 1920.

Mr. Karluff Hanssen, Vanderbilt Hotel, New York.

DEAR SIR: I beg to acknowledge receipt of your letter of March 23rd, concerning the overpayment and differences in installments on certain Pusey & Jones' boats,

Wilmington Hull- Nos. 1010, 1011, 1012, 1013, and 1014 and New Jersey Hull- Nos. 203, 204, 205 and 206, amounting to	\$1,261,912.50
Plus part of banking expenses	18,943.37
	<hr/> \$1,280,855.87

On which is paid an equity in the S./S.

Fire Island amounting to	\$565,875
And on which I have agreed to a further amount of	300,000
	<hr/> 865,875.00
	<hr/> \$114,980.87

491 & 492 I accept your proposal to exchange the remaining amount into Norwegian Kroner at a rate of 3.244 making Kr. 1,346,197.94 and to pay 6% interest on this amount from September 15th, 1917, and 6% interest on the above mentioned dollar amount (\$300,000) from March 10, 1920, until paid.

When these payments are made, same will cover all claims in connection with overpayments and differences in installments.

I further confirm that the shares and notes deposited at first serve as security for these amounts. Yours very truly, (Signed) Christoffer Hannevig. C. H./R.

(Here follows power of attorney, marked pages 493 and 494.)

The Christiania Group of Norwegian Shipowners, 816 Evans Building, Washington, D. C.; Raadhusgate 1 & 3, Christiania.

Christiania, December 20, 1919,
Raadhusgate 1 & 3.

POWER OF ATTORNEY.

We, the undersigned, members of "the Christiania Group of Norwegian Shipowners," hereby authorize Mr. H. Karluf Hanssen, attorney at law, of Haugesund, to negotiate on our behalf and in case, to make a binding agreement with Mr. Christoffer Hannevig regarding payment of security, thereunder, in case, payment in the form of tonnage, for all "overpayments" and differences in installments pertaining to the nine contracts belonging to us at the Pusey and Jones yards and, in case, to take all legal steps which he may deem necessary in order to secure our said claims. The amounts with accrued interest and costs up to September 1, 1919, are specified in "Statement and Brief Discussion of the Case" dated November 5, 1919, prepared by the group and delivered at the same day by the representative of the Group in Washington to the United States Shipping Board. "A./S. Sorlandske Lloyd." (Sgd.) Karl A. Thorbjørnsen. "D./S. A./S. Tromp." (Sgd.) C. R. Christophersen. "D./S. A./S. Haug." (Sgd.) Lars Maeland. "A./S. Maritim." (Sgd.) Lars Maeland. "A./S. Mercator." (Sgd.) Lars Maeland. (Sgd.) H. Kjerschow. (Sgd.) Harry Borthen. (Sgd.) E. and S. Chr. Evensen. (Sgd.) Jacob Prebensen.

496 It is hereby officially certified that Karl A. Thorbjørnsen, C. R. Christophersen, Lars Maeland, H. Kjerschow, E. & S. Chr. Evensen and Harry Borthen have signed this document. For the certifying paid to the Government according to stamp 2 two kr.

Office of the Town Judge and Notary Public of Christiania, December 20, 1919. (Sgd.) Adelheid Brevig, Acting. [Seal.] (Stamp.)

It is hereby certified that Mr. Jacob Prebensen, Junior, in his own handwriting has signed this document.

For certification paid to the Government kr 2 as per affixed stamp.

Office of the Town Judge of Risør, December 22, 1919. (Sgd.)

— Grue. [Seal.] (Stamp.)

It is hereby certified that the foregoing is a true and correct translation of the original document written in the Norwegian language, hereto annexed under the seal of this legation.

Legation of Norway, Washington, D. C., June 17, 1921. (Sgd.) H. Bryn, Minister of Norway. [Seal.]

497

No. 6538.

UNITED STATES OF AMERICA,
Department of State:

To all to whom these presents shall come, Greeting:

I certify that Mr. H. Byrn whose name is subscribed to the paper hereto annexed, is duly accredited to Government as Envoy Extraordinary and Minister Plenipotentiary of the Kingdom of Norway.

In testimony whereof, I, Charles E. Hughes, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this eighteenth day of June, 1921. [Seal.] Charles E. Hughes, Secretary of State, by (Sgd.) Ben G. Davis, Chief Clerk.

For the contents of the annexed document the Department assumes no responsibility.

498 CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA,
City of Christiania,
Kingdom of Norway, ss:

I, Marion Letcher, Consul General of the United States of America in and for the district of Christiania, Norway, do certify that the signature of Adelheid Brevig as duly acting notary public in and for the district of Christiania, and F. O. Grue as duly acting notary public in — for the district — Risør, Norway, subscribed to the annexed instrument are their true and genuine signatures and that as such are entitled to full faith and credit.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office this twenty-ninth day of December, A. D. 1919. Serial No. 13939. Fee \$2.00 [Seal.] (Sgd.) Marion Letcher, Consul General of the United States of America. (Stamp.)

499

No. 6535.

UNITED STATES OF AMERICA,
Department of State:

To all whom these presents shall come, Greeting:

I certify that Marion Letcher, whose name is subscribed to the paper hereto annexed, was at the time of subscribing the same, Consul General of the United States at Christiania, Norway, duly commissioned; and that full faith and confidence are due to his acts as such.*

*For the contents of the annexed document the Department assumes no responsibility.

In testimony whereof I, Charles E. Hughes, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington this eighteenth day of June, 1921. [Seal.] Charles E. Hughes, Secretary of State, By (Sgd.) Ben G. Davis, Chief Clerk.

500

MOTION FOR LEAVE TO AMEND BILL.

[Filed June 20, 1921.]

And now, to wit, June 20, 1921, at the hearing of the rule on the respondent to show cause why the Receivers should not be continued during the pendency of this cause, comes Hans Karluf Hansen, the complainant, by John P. Nields, his solicitor, in open court, and moves the court for leave to amend his bill of complaint herein, as follows:

First. By adding to the end of paragraph numbered "7," the following:

"And complainant avers that at the time of filing the bill of complaint in this cause and at all the times prior thereto when any of the transactions occurred that are alleged in said bill the said Christoffer Hannevig, Inc., was and is a corporation organized under and by virtue of the laws of the State of New York and a citizen and resident of said State, and the said Christoffer Hannevig was and is an alien, and a subject of the King of Norway and now residing therein, and the said Christoffer Hannevig, Inc., and Christoffer Hannevig were competent as such citizen and alien respectively to maintain suit in this court against the said respondent for the enforcement of said indebtedness represented by said promissory notes, if no assignment or transfer had been made."

Second. By striking out the period after the last word of paragraph numbered "10," and adding thereto the following: "and/or the respondent has assets that are insufficient to pay its liabilities in full." (Sgd.) John P. Nields, Solicitor for Complainant.

501 **PETITION OF JACOB PREBENSEN, Jr., ET AL., FOR LEAVE TO INTERVENE.**

[Filed July 6, 1921.]

To the Honorable the Judge of the District Court of the United States for the District of Delaware:

The petition of Jacob Prebensen, Jr., H. Kjerschow, Harry Borthen, all citizens of the Kingdom of Norway, "A/S Tromp," "A/S Maritim," "A/S Haug," "A/S Mercator," "A/S Sorlandske Lloyd," corporations existing under and by virtue of the laws of the Kingdom of Norway, and E. Evensen and N. Christian Evensen, a co-partnership doing business under the name of "E. & N. Chr. Evensen," at

Christiania, Norway, each partner thereof being a citizen of the Kingdom of Norway, respectfully represent:

That your petitioner, Jacob Prebensen, Jr., now is and at all of the times mentioned in the bill of complaint filed in this cause was a subject of the King of Norway, and a citizen of the Kingdom of Norway and a resident of Risør, Norway; that your petitioner H. Kjerschow now is and at all of the times mentioned in the bill of complaint filed in said cause was a subject of the King of Norway and a citizen of the Kingdom of Norway, and is now temporarily residing at Phoenix, Arizona, in the United States of America; that your petitioner, Harry Borthen, now is and at all of the times mentioned in the bill of complaint filed in said cause, was a subject of the King of Norway, a citizen of the Kingdom of Norway and a resident of Christiania, Norway; that your petitioner, "A/S Tromp" is a corporation duly organized and existing under the laws of the

502 Kingdom of Norway and has its principal office and place of business in Drammen, Norway; that your petitioner, "A/S Maritim" is a corporation duly organized and existing under the laws of the Kingdom of Norway and has its principal office and place of business in Haugesund, Norway; that your petitioner, "A/S Haug" is a corporation duly organized and existing under the laws of the Kingdom of Norway and has its principal office and place of business in Haugesund, Norway; that your petitioner, "A/S Mercator" is a corporation existing under the laws of the Kingdom of Norway and has its principal office and place of business in Haugesund, Norway; that your petitioner, "A/S Sorlandske Lloyd" is a corporation duly organized and existing under the laws of the Kingdom of Norway and has its principal office and place of business in Christiania, Norway; that your petitioner, Eiven Evensen and Nils Christian Evensen, is a co-partnership doing business under the name of "E. & N. Chr. Evensen," and has its principal office and place of business in Christiania, Norway.

2. That during the year 1917 one Christoffer Hannevig, a subject of the King of Norway, and a citizen of the Kingdom of Norway, owned the majority of the capital stock of Bulk Oil Transports, Inc., and of the Maass Steamship Corporation, both corporations organized and existing under the laws of the State of Delaware. In the year 1917, Christoffer Hannevig caused the said Bulk Oil Transports, Inc., to make certain contracts with The Pusey and Jones Company, respondent in the above cause, wherein The Pusey and Jones Company agreed to build certain ships designated respectively as Nos. 1010, 1011, 1012, 1013 and 1014, and the said Bulk
503 Oil Transports, Inc., agreed to pay a certain stipulated sum upon the signing of the said contracts and further sums as the work progressed. In the same year, Christoffer Hannevig caused similar contracts to be made between the said Maass Steamship Corporation and the New Jersey Shipbuilding Company, a corporation organized and existing under the laws of the State of Delaware, for the building of certain ships designated respectively Nos. 203, 204, 205 and 206. That on or about the months of August,

September and October, 1917, the said Christoffer Hannevig or his assigns, sold, assigned and transferred said five contracts with the said The Pusey and Jones Company in the following manner, to wit: the contract for the construction of ship No. 1010 to your petitioner, Jacob Prebensen, Jr.; the contract for the construction of ship No. 1011 to your petitioner, "A/S Tromp"; the contract for the construction of ship No. 1012 to your petitioner, "A/S Maritim"; the contract for the construction of ship No. 1013 to your petitioner, "A/S Haug"; and the contract for the construction of ship No. 1014 to your petitioner, "A/S Mercator"; and on or about the same months said Christoffer Hannevig or his assigns sold, assigned and transferred said contracts with the New Jersey Shipbuilding Company as follows: to wit: said contract for the construction of ship No. 203 to your petitioner, "A/S Sorlandske Lloyd"; said contract for the construction of ship No. 204 to your petitioner "E. & N. Chr. Evensen"; said contract for the construction of ship No. 205 to your petitioner, H. Kjerschow; and said contract for the construction of ship No. 206 to your petitioner, Harry Borthen. That in negotiating the sales of said contracts it was represented to your petitioners

by Christoffer Hannevig that ten per centum of the purchase price of each vessel had been paid on account thereof to The

504 Pusey and Jones Company and the New Jersey Shipbuilding Company, respectively, at the time when each contract was made and that the contract price for the building of each of said vessels was one hundred forty dollars (\$140) per dead weight ton; that in fact only five per centum of the purchase price of each of said vessels had been received by The Pusey and Jones Company and the New Jersey Shipbuilding Company at the time of the making of the contracts respectively, and the actual contract price for building each vessel ranged from one hundred seventy-five dollars (\$175) to one hundred eighty-five dollars (\$185) per dead weight ton (d. w. t.). That as a result of these mis-statements or misrepresentations your petitioners made large over-payments to the said Christoffer Hannevig aggregating the sum of one million two hundred sixty-one thousand nine hundred twelve dollars and fifty cents (\$1,261,912.50), which sum then and there became due and owing from the said Christoffer Hannevig to your petitioners. That the several parts of said aggregate sum of \$1,261,912.50 due to each of your petitioners is as follows:

Hull No. 1010, Jacob Prebensen, Jr.....	\$216,412.50
Hull No. 1011, "A/S Tromp".....	216,412.50
Hull No. 1012, "A/S Maritim".....	195,750.00
Hull No. 1013, "A/S Haug".....	195,750.00
Hull No. 1014, "A/S Mercator".....	175,087.50
Hull No. 203, "A/S Sorlandske Lloyd".....	65,625.00
Hull No. 204, "E. & N. Chr. Evensen".....	65,625.00
Hull No. 205, H. Kjerschow.....	65,625.00
Hull No. 206, Harry Borthen.....	65,625.00

\$1,261,912.50

505 3. That your petitioners, at Christiania, Norway, on the twentieth day of December, 1919, made and constituted Hans Karluf Hanssen, the complainant in the above entitled cause, their attorney in law and in fact among other things to take all legal steps which he might deem necessary in order to secure the payment of the said sum of \$1,261,912.50 with interest and costs then and there due and owing from the said Christoffer Hannevig to your petitioners, a copy of which power of attorney now remains on file in said cause as a part of the affidavit of the said complainant filed June 20, 1921, which your petitioners crave leave to refer to and pray that the same may be taken as part of this petition.

4. That pursuant to the authority vested by your petitioners in the said Hans Karluf Hanssen, the complainant, as their attorney in law and in fact, did on February 13, 1920, make and enter into a certain contract with the said Christoffer Hannevig to secure the payment of the said indebtedness then and there due from the said Christoffer Hannevig to your said petitioners, a photostatic copy of which contract and a translation thereof is annexed to the affidavit of Hans Karluf Hanssen filed in the above-entitled cause on June 20, 1921, to which your petitioners crave leave to refer and pray that the same be taken as part of this petition. That in pursuance of said contract and on the date thereof, to secure the payment of said indebtedness from Christoffer Hannevig to your petitioners, the said Christoffer Hannevig then and there delivered to the complainant in the above cause the three original certificates of stock representing 7,200 shares of preferred stock of the respondent company with the with the endorsements thereon and the nine original
506 promissory notes of the respondent company aggregating \$650,000, copies of which certificates and notes are annexed to the bill of complaint filed in this cause and marked "Exhibits A and C," to which your petitioners crave leave to refer and pray that they may be taken as part of this petition. That the said shares of stock and the said promissory notes have continuously thereafter been held and have remained within the exclusive possession of the said Hans Karluf Hanssen, the complainant, under said contract of pledge for the benefit of your petitioners. In partial payment of the aggregate amount of \$1,261,912.50 due to your petitioners from the said Christoffer Hannevig as aforesaid, the said Hans Karluf Hanssen heretofore received from the said Christoffer Hannevig a certain equity — which your petitioners realized \$565,875, thereby reducing the principal indebtedness to the sum of \$696,037.50. Pursuant to the power and authority vested in said Hans Karluf Hanssen by your petitioners and with our knowledge and consent, said Hans Karluf Hanssen brought this suit for the protection of the interests of your petitioners and for the protection of the interests of said Hans Karluf Hanssen and of all other stockholders and creditors of the Pusey Jones Company.

5. That Hans Karluf Hanssen, the complainant in the above entitled cause, and one Lars Macland, a citizen of the Kingdom of Norway, residing at Haugesund, Norway, are joint owners, each

holding a one-half interest in the following holdings or shares of capital stock in the three Norwegian corporations, petitioners herein, to wit: Five and one-half shares of the total outstanding issue of fifteen shares of the capital stock of "A/S Maritim", 507 twelve hundred shares of the total outstanding issue of three thousand shares of the capital stock of "A/S Haug"; seventy-five shares of the total outstanding issue of seven hundred and fifty shares of the capital stock of the "A/S Mercator" which is the owner of contract for the construction of hull No. 1014. That Hans Karluf Hanssen, the complainant, is one of the two managing directors of said "A/S Maritim," said "A/S Haug," and said "A/S Mercator," and as such managing director, is authorized and empowered to make them parties to this petition and to verify the same on behalf of said three corporations.

6. That your petitioners are acquainted with the contents and substance of the bill of complaint heretofore filed in the above-stated cause and are informed and believe and therefore aver that the allegations therein stated are true. That pursuant to the order of Court entered in the above-entitled cause your petitioners duly authorized Hans Karluf Hanssen, the complainant, to obtain and furnish a cost bond in the sum of ten thousand dollars conditioned as provided in said order.

7. That your petitioners have an interest in the subject of the bill of complaint and in obtaining the relief prayed by the said complainant and crave leave to refer to said bill of complaint filed in the above-entitled cause together with the facts set forth in this petition as a statement in detail for their grounds and reasons for asking leave to be joined as parties complainant in said bill of complaint.

508 Wherefore your petitioners pray this Honorable Court for an order joining them as parties complainant in the above-entitled cause.

And your petitioners will ever pray, etc. Jacob Prebensen, Jr. by (Sgd.) H. Karluf Hanssen, His Attorney. H. Kjerschow, by (Sgd.) H. Karluf Hanssen, His Attorney. Harry Borthen, by (Sgd.) H. Karluf Hanssen, His Attorney. "A/S Tromp," by (Sgd.) H. Karluf Hanssen, Its Attorney. "A/S Maritim," by (Sgd.) H. Karluf Hanssen, Its Attorney. "A/S Haug," by (Sgd.) H. Karluf Hanssen, Its Attorney. "A/S Mercator," by (Sgd.) H. Karluf Hanssen, Its Attorney. "A/S Sorlandske Lloyd," by (Sgd.) H. Karluf Hanssen, Its Attorney. "E. & N. Chr. Evensen," by (Sgd.) H. Karluf Hanssen, Its Attorney. (Sgd.) John P. Nields, Solicitor for Petitioners.

509 UNITED STATES OF AMERICA,
District of Delaware, ss:

Hans Karluf Hanssen, being duly sworn, deposes and says: That he is the attorney in law and in fact for each of the petitioners in the foregoing petition; that he has read the said petition and knows the contents thereof; that the allegations therein contained, so far

as they relate to his own act, are true and so far as they relate to the act of others he believes them to be true; that none of the said petitioners is now within the District of Delaware and that all of them are without the United States and in Norway except H. Kjer-schow, who your affiant is informed and believes is temporarily residing at Phoenix, Arizona. (Sgd.) H. Karluf Hanssen.

Sworn and subscribed before me the sixth day of July, A. D. 1921. [L. s.] (Sgd.) William F. O'Keefe, Notary Public.

ORDER.

And now, to wit, this sixth day of July, A. D. 1921, upon considering the foregoing petition and upon motion of John P. Nields, solicitor for the petitioners, it is ordered by the court that the said petition may be filed and that the said petitioners have leave to become parties complainant to the said cause, hereby granting and reserving to any and all the parties to said cause by intervention or otherwise, the right to raise any question with respect to this order within ten days from the date hereof, and in the absence of cause shown the leave hereby granted shall be absolute. (Sgd.) Hugh M. Morris, J.

510 PETITION OF RECEIVERS TO PAY BILLS, &c.

[Filed July 7, 1921.]

To the Honorable the Judge of the United States District Court for the District of Delaware:

The undersigned receivers appointed by your Honor respectfully represent:

That they have found in connection with their administration as receivers of The Pusey and Jones Company several bills for freight on materials used in the plant, for which checks were drawn just prior to their appointment as receivers, to wit:

Wilmington Steamboat Company	\$1.80
George W. Bush and Sons Company	12.49

The undersigned, with respect to these bills, desire the consideration of the following facts:

That the two transportation companies mentioned above are affording daily facilities to The Pusey and Jones Company for shipping and delivering goods to it in their current work. They respectfully recommend that an order may be made that they pay these amounts.

The receivers further represent that under certain agreements for royalty to patentees there is due to

John Stoddard monthly the sum of \$32.50;

John Warren Vedder every three months the sum of \$822.50;

B. D. Coppage, every six months, the sum of \$864.68.

The agreement with The Pusey and Jones Company under which these royalties have become due, provides that the patentees may

511 terminate the agreement on notice unless payment of sums accruing to patentees under said agreements are settled every six months. The amounts above mentioned have now accrued under this six months' period and are due to the patentees.

The receivers respectfully request the direction of the Court as to the settlement of these amounts, being unwilling to risk the termination of the agreement without the order of the Court to that effect.

The receivers also respectfully represent that the bills for electric light, power, gas, telephone and telegraph service have accrued during the month of June ten days of which had passed prior to their appointment as receivers. The bills for these services have not yet been received and the exact amount cannot be stated.

The receivers respectfully request authority to make settlement for these bills when received, either in whole or in part as shall seem proper to the Court. (Sgd.) Willard Saulsbury, (Sgd.) Chas. E. Evans, Receivers of the Pusey and Jones Company.

ORDER.

And now, to wit, this seventh day of July, A. D. 1921, the foregoing petition of the receivers of The Pusey and Jones Company, having been presented to the Court and duly considered:

It is ordered that the said receivers shall pay and liquidate the bills stated in the forgoing petition and they are hereby authorized and empowered to pay in full the public service bills mentioned therein when received. (Sgd.) Hugh M. Morris, J.

512 OBJECTIONS TO PETITION OF INTERVENTION.

[Filed July 16, 1921.]

Comes the defendant above named by its solicitors, Robert Penington and George N. Davis, and objects to the granting of the petition for leave to intervene of Jacob Prebensen, Jr., and others, and moves the Court for an order dismissing the said petition filed by Jacob Prebensen, Jr., H. Kjerschow, Harry Borthen, all citizens of the Kingdom of Norway, "A/S Tromp," "A/S Maritum," "A/S Haug," "A/S Mercator," "A/S Sorlandske Lloyd," corporations existing under and by virtue of the laws of the Kingdom of Norway, and E. Evensen and N. Christian Evenson, a co-partnership doing business under the name of "E. & N. Chr. Evensen," at Christiania, Norway, each partner thereof being a citizen of the Kingdom of Norway, heretofore filed by the above petitioners in this suit in the above entitled cause on the sixth day of July, 1921, asking, on behalf of the said petitioners, for an order joining them as parties complainant in the above entitled cause.

The grounds upon which the foregoing motion is based, are as follows:

1. For that the petitioners to intervene do not allege or show that they are any of them either creditors or stockholders of The Pusey and Jones Company.

2. For that any contentions that the petitioners or any of them are or have any standing as either stockholders or creditors of The Pusey and Jones Company are necessarily based on the claim that the complainant was not and never has been either a stockholder or
513 creditor of The Pusey and Jones Company, and had no standing to file the bill of complaint herein, and that the bill of complaint cannot be amended in this indirect manner to constitute it a bill by the present petitioners instead of a bill by the original complainant, and any such change must, by the rules and practice of equity and pursuant to the provisions of the Federal Constitution, be by such would-be intervenors instituting a new suit in their own right.

3. For that the petitioners, if they show any right in themselves to be parties complainant in such a suit in equity, do so only by establishing that the present complainant has no standing to maintain such a suit, and that the joinder of a plaintiff who has no right or standing to maintain such a bill under the rules of equity procedure renders the whole bill demurrable for the misjoinder of plaintiffs.

4. For that the proposed intervention is obviously for the purpose of contesting complainant's ownership of the cause of action alleged in the bill and having the intervenors substituted as complainants, and that this under the decisions of the Federal Courts and especially *Cautliel v. Lawrence* (256 Fed. Rep. 714) and Equity Rule 37 cannot be done; and such proposed intervention is not in subordination to and in recognition of the propriety of the main proceeding.

5. For that as held in *Keyser v. Reener* (87 Virginia 249) the plaintiff's "baseless claim cannot be bolstered by another suit engrafted on this in the form of" a petition for leave to intervene; and that as held in *House v. Dexter* (9 Mich. 246) "the substitution of a new suit for the old one" may not be permitted; and that it appears that such is the nature of the proposed intervention.

514 6. Because, under the facts as set forth in the petition, Hans Karluf Hanssen has no authority to file the said petition as attorney at law and in fact on behalf of the said petitioners, and the same on its face is filed by him under a claim of written authority, which writing is set forth in the petitioner's papers and confers no such authority.

7. Because the facts set forth disclose that the said petitioners are neither stockholders nor creditors of The Pusey and Jones Company, respondent and are, therefore, without any legal right to maintain this suit or appear as complainants herein.

8. That the allegations set forth in the bill of complaint filed herein alleged as the grounds and reasons for the petitioners asking leave to be joined as parties complainant, are shown to be wholly untrue and without foundation in fact by the affidavits filed in this cause by the respondent, in so far as the said allegations refer to the procurement of the judgment in the case of the *Baltimore Dry Docks and Shipbuilding Company v. The Pusey and Jones Company*, and the previous relations alleged in said bill to have existed between the said *Baltimore Dry Docks and Shipbuilding Company*, *Christopher Hannevig* and *The Pusey and Jones Company*.

9. That the allegations set forth in the bill of complaint filed herein alleged as the grounds and reasons for the petitioners asking leave to be joined as parties complainant, are shown to be wholly untrue and without foundation in fact by the affidavits filed in this cause by the respondent, in so far as the said allegations refer to the solvency of The Pusey and Jones Company.

515 10. For that this proceeding is not sustainable in this Court as a bill in equity, but that the relief thereby sought can be granted only by the Chancellor of the State of Delaware in the exercise of the visitatorial powers of that State over corporations organized by it, and that if Section 3883 of the Delaware Code, under which the proceeding is instituted, could be regarded in any aspect as a statute authorizing judicial insolvency proceedings, such proceedings would not constitute a suit in equity, and moreover, all State insolvency acts, and proceedings thereunder, were superseded by the National Bankruptcy Act, and such proceedings under such act could not be instituted or carried on in any Court, and especially not in the Courts of the United States, in derogation of the Bankruptcy Act.

11. And for that the said petition is otherwise defective and not in accordance with law.

And in support of this motion and of its object to the intervention this defendant refers to and submits to this Court its answer herein and to each and all the affidavits heretofore filed by it in this suit. (Sgd.) Robert Penington, (Sgd.) George N. Davis, Solicitors for Respondent. (Sgd.) Selden Bacon, of Counsel.

I, Robert Penington, one of the solicitors for the respondent, and counsel filing the within motion, hereby certify that the foregoing motion, in my opinion, is good in law, and is not filed for the purpose of delay. (Sgd.) Robert Penington, Solicitor for Respondent.

516

OPINION OF THE COURT.

[Filed July 21, 1921.]

The bill of complaint was filed by Hans Karluf Hanssen against The Pusey and Jones Company, a Delaware corporation, praying the appointment of a receiver for that corporation. The bill alleges, among other things, that the complainant is a subject of the King of Norway and a resident of Norway; that the jurisdictional amount is involved; that a statute of the State of Delaware authorizes the appointment of a receiver of a Delaware corporation on the application of any creditor or stockholder thereof whenever the corporation is not one for public improvement and shall be insolvent. The bill further alleges that the complainant is a stockholder and a creditor of the respondent corporation; that the respondent is not a corporation for public improvement, and that it is insolvent in that it is unable to pay its obligations as they fall due in the usual course of business. Upon filing the bill the complainant moved for the appointment ex parte of one or more receivers. This motion was based upon the further allegation of the bill that a judgment entered in this Court

on the twenty-second day of March, 1921, at the suit of Baltimore Dry Docks and Shipbuilding Company against The Pusey and Jones Company for \$800,125, was illegally, unlawfully, and, in effect, collusively obtained. As the judgment would pass beyond the control of the Court at the end of the term at which it was entered unless an application to vacate and set aside the judgment should be made before the rising of the Court on the last day of the term and as the bill of complaint was filed on the ninth day of June and as the term

of this Court at which the judgment was entered would end
517 on the thirteenth day of June receivers were appointed ex parte and without delay in order that they might have an opportunity before the end of the term to qualify, examine the matter and take such action with respect to the judgment as they might deem proper or be advised.

The matters now before the Court arise upon a rule, issued at the time of the filing of the bill, directed to the respondent and made returnable on June 18, to show cause why the receivers appointed ex parte to continue until the further order of the Court should not be continued during the pendency of the cause. The rule was heard upon bill, answer, affidavits and exhibits filed by the respective parties. Paragraph 3883, of the Revised Code of Delaware of 1915, upon which complainant relies, provides that "Whenever a corporation shall be insolvent, the Chancellor, on the application and for the benefit of any creditor or stockholder thereof, may, at any time, in his discretion, appoint one or more persons to be receivers of and for such corporation, to take charge of the estate, effects, business and affairs thereof, and to collect the outstanding debts, claims, and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by such corporation and may be necessary and proper: the powers of such receivers to be such and continued so long as the Chancellor shall think necessary; provided, however, that the provisions of this section shall not apply to corporations for public improvement." While the defendant admitted in open court that the allegations of the bill were sufficient to warrant the appointment ex parte of receivers, it contends that, in view of the facts dis-

closed by the affidavits filed in support of and in opposition to
518 the rule, the plaintiff has failed to establish that he is either a stockholder or a creditor of the defendant corporation or that the defendant is insolvent in the sense that it has not available funds to meet current liabilities as they mature and further that even if it appears that the complainant is a stockholder or a creditor and that the defendant company is insolvent as alleged, that the facts shown do not warrant the exercise of judicial discretion in favor of the appointment of receivers.

It is to be constantly borne in mind that in order to sustain a motion for the appointment of a receiver pendente lite it is not necessary to decide in favor of complainant upon the merits nor is it necessary that such a case be presented as will, beyond all doubt, entitle him to a decree upon the final hearing. In granting temporary relief

by the appointment of such receiver courts of equity in no manner anticipate the ultimate determination of the questions of right involved. They merely recognize that a sufficient case has been made out to warrant the judicial preservation of the rights or property in controversy, for the benefit of all parties in interest, until a hearing upon the merits shall have been had without expressing and, indeed, without having the means of forming a final opinion as to such rights. The Court will not, however, upon an application for temporary relief ignore the probability of plaintiff's finally establishing his alleged right nor will it by the appointment of receivers pendente lite disturb defendant in the possession of its property without a probability that plaintiff will prevail upon the final hearing.

The affidavits and exhibits filed herein disclose the facts herein-after stated. In December, 1919, one Christoffer Hannevig, then the president of the respondent corporation, was indebted to nine

519 Norwegian individuals and corporations in an amount exceeding \$1,250,000. To secure the payment of that indebtedness

the complainant came to America as the authorized representative of the Norwegian creditors. After negotiations between Hannevig and the complainant the former delivered to the latter on February 13, 1920, certain shares of stock and nine promissory notes, aggregating \$650,000, made by The Pusey and Jones Company, of which eight were payable to the order of Christoffer Hannevig, Inc., and the remaining one to the order of Hannevig. One note was dated July 27, 1917, another October 1, 1917, and the remaining notes bore intervening dates. Some were payable in four months, others in three months after their dates. All the notes were endorsed in blank by the respective payees. They have at all times since their delivery to the complainant remained in his possession. The delivery of the notes was accompanied by a memorandum, written in Norwegian signed by Hannevig and the complainant, a translation of the pertinent portions of which is as follows:

"The undersigned Christoffer Hannevig, hereby acknowledges this date that he has delivered to Mr. H. Karluf Haussen, as representative of the nine contract holders at the Pusey & Jones Co. which have a certain amounts owing to them for overpayments and differences on the installments. The shares etc. given below as security correct payments for the obligations with interest which are now due. * * *

"I reserved the deposited values shall be delivered to me and can be disposed of by me free of any incumbrances on condition that I pay my obligations in Norwegian currency at an exchange taken at the respective installment dates with an interest of 6% and this shall not acknowledge that I am bound to pay anything else except \$565,875.00 which I have already paid out in taking over the S. S.

'Fire Island' in American Dollars."

520 At the time of the delivery of the notes to the complainant Hannevig was or thereafter became indebted to the defendant by reason of matters wholly unconnected with the notes in a sum exceeding the aggregate amount thereof. On September 18, 1917, Hannevig entered into an agreement with the United States

Shipping Board Emergency Fleet Corporation that he would extend the terms of payment of the notes until the completion of the last of eight ships requisitioned by an order of the Shipping Board of August 3, 1917. Pursuant to that agreement with the Shipping Board a memorandum was made on the back of each of the notes as follows: "Extended according to letter dated September 18, 1917, to U. S. Shipping Board Emergency Fleet Corporation." The ships referred to in the letter or agreement were all completed before the first day of August, 1919. The claim against the defendant evidenced by the notes has not been reduced to judgment.

Under this state of facts the defendant makes four contentions. First, that by the agreement of September 18, 1917, the negotiability of the notes was destroyed; second, the notes having been delivered to the complainant after their maturity, they were received by him subject to all equities against Hannevig, and Hannevig being indebted to the defendant in a sum in excess of the amount of the notes, nothing is due thereon; third, that the notes having been delivered to the complainant as the representative of the Norwegian creditors of Hannevig the complainant has not title to the notes and is not a creditor of the defendant corporation; and lastly, that even if complainant is a creditor he is only a general creditor and a suit of this character may be maintained in this Court only by a judgment creditor.

521 As to the first contention, it is unnecessary to decide whether an agreement for an indefinite extension of time for payment embodied in a note or entered into between the parties thereto destroys its negotiability, for the agreement here under consideration touching that matter was one made, not with the maker of the notes, but with a third person. Such an agreement did not and could not affect the notes, their tenor or any quality thereof. The second contention overlooks the doctrine that overdue paper is negotiable and that an endorsee takes the paper subject only to such equities as attach to the notes themselves and that in his hands it is not subject to claims against the payee or an intermediate endorser arising out of collateral matters or independent transactions. 3 R. C. L. 1046. Daniels on Negotiable Instruments, Sec. 725. The third contention ignores the negotiable character of the notes and that an endorsement of a note to an agent transfers to him title thereto as against all parties except his principal. 3 R. C. L., Bills and Notes, Secs. 201, 190, 198, 199, 200. The notes are unpaid and no equities have been set up by the defendant that would serve to defeat in whole or in part the claim of the complainant based thereon. That a suit of this nature may be maintained by a general creditor has long been settled so far as this Court is concerned by *Jones v. Mutual Fidelity Co.*, 123 Fed. 506. The cases cited by the defendant herein in support of its contention that a suit of this character may be maintained only by a judgment creditor were all reviewed in that case. It appearing that the complainant is a creditor who may maintain this suit in this court it is unnecessary now to determine whether he is also a stockholder as alleged.

Little need be said with respect to the insolvency of the defendant in that it is unable to meet its obligations as they fall due in the usual course of business. It has not for years been able so to meet its maturing obligations. For a long time the defendant has been financially dependent upon the Fleet Corporation. The accounts between the defendant and that corporation have not been adjusted and are in litigation. There is apparently no substantial reason to expect that further moneys will be immediately forthcoming from that source. In August, 1920, defendant's financial condition, as stated by it in its bill of complaint filed in the Supreme Court of the District of Columbia against the United States Shipping Board Emergency Fleet Corporation, had resulted in an inability "to obtain and give acceptable security for the completion and delivery of vessels which otherwise it would be able to contract to construct in one or other of its shipyards"; inability "to obtain contracts for present or future ship-construction work"; an "ever-increasing impairment of credit from which plaintiff has suffered for more than six (6) months last past and will continue to suffer until same is completely ruined or irretrievably lost"; and in a rapidly diminishing executive staff and labor force which "soon, unless remedied, will be non-existent." I find nothing in the record to overbalance those statements of the defendant. Apparently, as then foretold, its condition has gradually become worse. A judgment for \$800,125 was obtained against it on March 22 last by the Baltimore Dry Docks and Shipbuilding Company. The validity of that judgment is not questioned by the defendant, yet it remains unpaid. It appears that the plaintiff therein entered into an agreement that it would not require payment thereof until November, 1921, but the terms and conditions of that agreement were extraordinary and were not those which obtain in the ordinary and usual course of trade and business.

523 It appearing that the complainant will probably be able to establish at final hearing that he is a creditor of the respondent company, and that that company is insolvent in that it is unable to pay its obligations as they mature in the ordinary and usual course of trade and business, should an order be now made continuing the receivers during the pendency of this cause? In *Ellis v. Penn Beef Co. et al.*, 9 Del. Ch. 213, 217, the Chancellor said:

"The appointment of a receiver pendente lite is a well-recognized branch of the general preventive jurisdiction to protect from injury the thing in controversy, and preserve it for all parties in interest until disposed of as the Court may direct. This is an exceedingly delicate and responsible duty, to be discharged with the utmost caution and only under such special and peculiar circumstances as demand summary relief. It is, therefore, not to be exercised doubtfully, but the Court must be convinced that the relief is needed, and that it is the appropriate means of securing a proper end. Serious injury to the complainant is an important element in deciding whether the relief should be granted. * * * The remedy is,

of course, provisional and not decisive of the ultimate rights nor conclusive of the merits. With a prima facie case made by the complainant, and probable cause for sustaining the bill, the preliminary relief should be granted, without going into the merits."

Are receivers necessary to protect the assets of the defendant and to preserve the same for all parties in interest until the final determination of this cause? All the shares of the capital stock, both preferred and common, stand pledged for large sums of money. The equities therein, if any, have likewise been assigned to secure the payment of other large sums of money. The Revised Code of Delaware, 1915, par. 1923, provides:

"The business of every corporation organized under the provisions of this Chapter shall be managed by a Board of not less than three directors, * * *"

An agreement entered into by and between the defendant corporation and the United States Shipping Board Emergency Fleet Corporation on the 14th of May, 1918, contains the following provision:

"The company (the defendant herein) further agrees to amend its by-laws so that the directors may take all necessary steps to elect Henry G. Barstar as Treasurer of the Company, and to make provision that the said office of Treasurer may be filled from time to time by a nominee of the Fleet Corporation and to provide by said changes in the by-laws that the Treasurer so named by the Fleet Corporation shall have complete control of the disbursements of the corporate funds at all three yards of the Company."

It further appears that the agreement so entered into by the company has been carried out, and that at the time of the appointment of receivers the Fleet Corporation, through its representative acting as treasurer, had complete control of all the corporate funds of the defendant and of their disbursement. It further appears that on March 18, 1921, an agreement was entered into (a copy of which is printed in the margin*) by which the affairs of the defendant corporation were to be managed and controlled; the purpose of that agreement being, as I understand it, not for the preservation of the assets of the defendant company for the benefit of all its creditors and stockholders, but primarily for the benefit of the parties to that agreement. True that agreement was approved by a judge of the District Court of the United States for the Southern District of New York; but that approval merely authorized its receiver in bankruptcy of a stockholder of The Pusey and Jones Company to become a party thereto. Such approval had no other effect or purpose. That approval had no relevancy to the questions here involved. It is well settled that a Court sitting in the State of New York is without control over the internal affairs of a corporation not chartered in that State. Fletcher on Corporations, 5786. These

*The several represented interests subscribing *be* this memorandum or plan of action with respect to the Pusey & Jones corporation agree:

two agreements amount to a practical nullification of the Delaware statute requiring that a Delaware corporation shall be managed by a board of directors the purpose of that statute being that the corporation shall be so managed for the benefit of all parties in interest and not merely for some of such parties.

In view of the financial condition of the company and the foregoing facts I deem the continuance of the receivers during the pendency of this cause essential for the protection of the interests of the complainant and others in like position. (Sgd.) Hugh M. Morris, J. July 21, 1921.

First. They will promote and approve the immediate election of a board of five directors of the Pusey & Jones Corporation to be constituted as follows:

Henry A. Wise, receiver in bankruptcy of Hannevig, his nominee or successor in office.

Hartwell Cabell, representing the insurance departments, or his successor appointed by them.

526 Laurence Leonard or other representative of the United States Shipping Interests.

George Weems Williams or other nominee of the Baltimore Dry Docks and Shipbuilding Company or a successor to be chosen as herein after provided.

William G. Coxe of Delaware.

Second. The Baltimore Dry Docks and Shipbuilding Company, hereinafter called the Dry Docks Company, will proceed with the trial of the case in which it asserts a claim against the Pusey & Jones Corporation for \$750,000, and accrued interest, which case is set for trial in the United States District Court for the District of Delaware on March 22, 1921, and to the trial of said case on said date no request for postponement will be made; and the said Dry Docks Company does stipulate that no execution will be issued or levied on said judgment for the period of six months from the date of entry thereof. The Dry Docks Company does also agree that if it at any time prior to the first of November, 1921, the full amount of its judgment, including accrued interest and court costs is received by it it will enter said judgment released (or assign same without recourse) and will also waive any and all rights accruing out of and in respect to the deposit of preferred and common stock of the Pusey & Jones Corporation by Christoffer Hannevig certificates of which are now in their possession or under their control. Upon receiving payment of said judgment interest and cost on or before the first day of November, 1921 the alleged purchase of the stock by the Dry Docks Company shall be considered as cancelled and the Dry Docks Company shall be released from any further liability to any one on account of said transaction and said stock shall be delivered by the Dry Docks Company to the said Hartwell Cabell and Henry A. Wise (and/or their respective successors) to hold the same for account of whom it may concern, and the Dry Docks Company will thereupon cause its nominee to resign from the board of directors of the said Pusey & Jones Corporation and the vacancy in said board and ca

327 the litigation and settlement committee hereinafter mentioned shall be filled by the selection of Henry A. Wise and Hartwell Cabell (or their respective successors) of a neutral and disinterested person acceptable to them both. If there is not paid to the Dry Docks Company on or before November 1, 1921, the full amount of the judgment, interest and cost, then the rights of the Dry Docks Company to the stock of the Pusey & Jones Corporation now in its possession shall be the same as if this agreement had not been executed but Henry A. Wise, one of the receivers in bankruptcy of Christoffer Hannevig or his successor and the superintendent of Insurance of the State of New York and the superintendent of Insurance of the State of Pennsylvania shall be permitted to intervene in the suit now pending in the United States District Court for the District of Delaware or in any other litigation now or then hereafter pending involving the title to or ownership of said stock, for the purpose of protecting their respective rights in regard to said stock and contesting the title to the same now insisted upon by the Dry Docks Company, it being understood that the said suit now pending in the said District Court of the United States for the District of Delaware shall be adjourned until November 15, 1921. The making of this agreement is without prejudice to the rights of the Dry Docks Company or the receivers or trustees of Hannevig or the superintendents of insurance of New York and Pennsylvania in regard to stock transfers made by Hannevig or title or ownership of such stock and is simply and solely an arrangement to postpone any question and the litigation of any questions in that regard until November 15, 1921, provided, however, that if before November 1, 1921, the Dry Docks Company shall have been fully paid as aforesaid this litigation shall be disposed of in the spirit of this agreement.

Third. Messrs. Rounds, Schurman and Dwight are now chief counsel for the Pusey & Jones Corporation in the litigations in connection with the prosecution of its claim against the United States Shipping Board and the United States. They shall be continued as such chief counsel with the right to continue the employment of Messrs.

328 McKinney & Flannery as local counsel in Washington, subject, however, to the joint advice, approval and control of a litigation and settlement committee composed of Henry A.

Wise or his successor and George Weems Williams or his successor to be selected as hereinbefore provided. No proposition or compromise, adjustment or settlement shall be made or accepted on behalf of the Pusey & Jones Corporation, excepting with the consent and approval and under the general discussion of Henry A. Wise (or his successor) and George Weems Williams (or his successor), Wise and Williams and their successors being hereby constituted a committee of two in full charge of all negotiations and settlements and all steps to be taken looking toward the settlement of the claims of the company against the Government or the United States Shipping Board or the Emergency Fleet Corporation. Williams shall not withhold approval of any settlement which pays Dry Docks

Co. in full on or before November 1, 1921. Hartwell Cabell or his successor, however, shall be kept fully informed of developments in connection with any such negotiations or settlements, it being intended that a full spirit of co-operation shall be preserved. It is further expressly understood and agreed that the board of directors and the stockholders of the Pusey & Jones Corporation shall take appropriate action to carry out the spirit and intent of this agreement to which end the present board of directors shall elect the board hereinbefore set forth and appropriate action shall also be taken for the purpose of holding a stockholders' meeting for the ratification of such action and the board of directors shall spread this agreement in full upon the corporate minutes, approve the same and by due resolution vote to carry out its intent and purpose in good faith and to carry out this agreement in every possible way, and the United States Government and its agencies and representatives, the United States Shipping Board and the Emergency Fleet Corporation shall be duly advised of the action taken by the several interests and be requested to co-operate in the carrying out of this agreement and particularly in reaching a prompt and just settlement of all
529 matters in controversy between the United States Government and its agencies aforesaid, and the Pusey & Jones Corporation.

The Board of Directors shall from time to time authorize the expenditure of such money as may in the judgment of the board be necessary and proper for the carrying out of the intent of this agreement, but no counsel shall be employed or retained by the company or compensated without the written consent and approval of said committee composed of Henry A. Wise and George Weems Williams or their respective successors.

This agreement has been entered into after conferences participated in by the following:

Jesse S. Phillips, Superintendent of Insurance of the State of New York.

Hartwell Cabell, as counsel for said Jesse S. Phillips, as liquidators of certain insurance companies.

Thomas B. Donaldson, Superintendent of Insurance of the State of Pennsylvania.

James E. Finegan, counsel for Thomas B. Donaldson, as liquidator of certain insurance companies.

William H. Hotchkiss, counsel for the Jefferson Insurance Company, North Atlantic Insurance Company and Liberty Insurance Company.

Henry A. Wise and Thomas P. Hanagan, receivers of Christoffer Hannevig by Saul S. Myers and James N. Rosenberg.

Laurence Leonard.

Charles Kimmich.

Chester Farr.

T. Langland Thompson.

George Gordon Battle.

Elon S. Hobbs.

George Weems Williams.

Sidney M. Henry, Vice President Dry Docks Company.

These participants in the conference leading to this agreement all have an interest in securing a prompt and equitable determination of the claim of the Pusey & Jones Corporation against the Government or its agencies.

530 All recognize the importance and desirability of having the committee composed of Messrs. Wise and Williams have exclusive and complete supervision of the litigation and charge of the settlements and all negotiations in respect thereto, and all parties to this agreement therefore agree that they will not interfere with any such negotiations or take any independent action whatsoever without first getting written approval of Messrs. Wise and Williams or their successor.

It is agreed that none of the parties hereto will institute or assist or acquiesce in the institution of any proceedings looking to a receivership in bankruptcy of the Pusey & Jones Corporation or other interference with the intentions of this instrument for the period to be terminated on November 1, 1921, or for such other and additional period as may be agreed upon unanimously by George Weems Williams, Hartwell Cabell and Henry A. Wise (or their respective successors). There being certain matters in issue between the receivers of Christoffer Hannevig and the insurance departments and the companies now being liquidated under their supervision, it is agreed that the insurance departments will furnish upon the request of the receivers or trustees of Hannevig such information, data and testimony as may be relevant and competent and as might be required by court order.

The making of this agreement is no recognition by the said receivers or trustees of prior rights on the part of the insurance departments in certain shares of the stock of the Pusey & Jones Corporation. The United States District Court for the Southern District of New York is to be asked to postpone the election of a trustee in bankruptcy of Christoffer Hannevig pending the determination of the matter in controversy between the Pusey & Jones Corporation and the United States Government and its respective agents.

531 New York City, March 18, 1921. Jesse S. Phillips, Supt. of Ins. of New York. Hartwell Cabell, Counsel for Above. Chas. Kimmich, Thomas B. Donaldson, Comm. of Insurance State of Penn. James E. Finegan, Atty Com. Donaldson, Counsel for Above. Elon S. Hobbs, Counsel for Jefferson Co. Ins. Companies, for Receiver of Christoffer Hannevig. J. N. Rosenberg, As Counsel for Wise & Hanagan. Henry A. Wise, Chester N. Farr, Jr., Geo. Gordon Battle, Counsel for Pusey & Jones. T. Langland Thompson, Counsel for Ch. Hannevig. Baltimore Dry Docks & Shipbuilding Co., by Sidney Henry, Vice President. George Weems Williams, Its Attorney. Thomas P. Hanagan, Receivers Christoffer Hannevig, Bankrupt, per Thomas Hanagan.

532 **PETITION OF RECEIVERS AND ORDER THEREON
RE INVOLUNTARY PETITION IN BANKRUPTCY
IN NEW YORK.**

[Filed July 23, 1921.]

To the Honorable the Judge of the District Court of the United States for the District of Delaware:

The petition of Willard Saulsbury and Charles B. Evans, receivers of said Court of and for The Pusey and Jones Company, respondent herein, respectfully shows:

1. Your petitioners were, by the order of the District Court of the United States for the District of Delaware, entered in the above cause on June 9, 1921, appointed receivers of The Pusey and Jones Company, and reference is hereby made to the original thereof, now on file and of record in the office of the clerk of said Court.

2. Subsequent thereto, and on the — day of June, A. D. 1921, your petitioners duly qualified as such receivers, by filing a bond in the sum of fifty thousand dollars (\$50,000) with surety, duly approved by the District Court of the United States for the District of Delaware, and thereafter took possession of all of the property of The Pusey and Jones Company, consisting of real estate, stock in trade, moneys, bills and accounts receivable, and all other property belonging to the said corporation, of any nature, situate within the Third Judicial Circuit of the United States.

3. Your petitioners, as receivers of The Pusey and Jones Company, immediately after their appointment, made diligent search
533 for and inquiry regarding the property of the said The Pusey and Jones Company. They likewise made inquiry concerning the principal place of business of The Pusey and Jones Company, and found that the principal and only place of business of The Pusey and Jones Company was then, and for more than six months prior thereto was at the City of Wilmington, in the State and District of Delaware, and that the principal place of business of the said The Pusey and Jones Company was located at Front and Poplar Streets, in the City of Wilmington, in the said State and District of Delaware. Your petitioners annex hereto as "Exhibit A," the affidavit of Clarence B. Lynch, relative to the principal place of business of the respondent company, and pray that the same may be taken as part of this petition. Your petitioners further ascertained that the said The Pusey and Jones Company was and is a corporation organized and existing under the laws of the State of Delaware, and was and is a citizen of said State, resident and domiciled therein. Your petitioners further ascertained and found that the respondent company owned two shipyards in the County of Gloucester, in the State of New Jersey, which had not been operated since the fall of the year 1920; that guards were being maintained in said shipyards in order to conserve the property of The Pusey and Jones Company located at that point. Your petitioners show that they have con-

tinued said guards, and as receivers for The Pusey and Jones Company, have paid the wages necessary to adequately conserve and preserve the property situate in the District of New Jersey, for the creditors and stockholders of said company.

4. Your petitioners further show that, in the District Court of the United States for the Southern District of New York, on the
534 nineteenth day of July, A. D. 1921, at eleven o'clock in the forenoon, an alleged involuntary petition in bankruptcy was filed against The Pusey and Jones Company, but your petitioners show that no adequate service of the subpoena issued on the filing of said involuntary petition in bankruptcy was had upon the said The Pusey and Jones Company, nor was any notice given to your petitioners, as receivers of the said The Pusey and Jones Company, of the filing of the said involuntary petition in bankruptcy, and your petitioners show that, upon the basis of such alleged unserved petition in involuntary bankruptcy, the District Court of the United States for the Southern District of New York on the same day that the said involuntary petition was filed, adjudged the said The Pusey and Jones Company a bankrupt, which adjudication your petitioners are informed and believe was improvidently made, in that the said The Pusey and Jones Company had not had its principal place of business, resided or had its domicile within the territorial jurisdiction of the Southern District of New York for the preceding six months or the greater portion thereof prior to the filing of the said involuntary petition in bankruptcy, and it did not have property within the jurisdiction of the Southern District of New York, and had not been adjudged a bankrupt by any Court of competent jurisdiction without the United States, and did not have property within the jurisdiction of the Southern District of New York; and your petitioners further show that The Pusey and Jones Company, at the time the said petition was filed, and for more than six months prior thereto, had its principal place of business in the City of Wilmington, in the District of Delaware, and resided and had its domicile within the
District of Delaware.

535 5. Your petitioners further show that upon the basis of such improvidently entered order of adjudication in bankruptcy, mentioned in the preceding paragraph hereof, Henry A. Wise, of New York City, New York, was appointed by said Court a receiver in bankruptcy of the said The Pusey and Jones Company by the District Court of the United States for the Southern District of New York; and your petitioners annex hereto, marked "Exhibit B," a certified copy of the proceedings in bankruptcy in the matter of The Pusey and Jones Company, alleged bankrupt, No. 29,991, certified by the clerk of the District Court of the United States for the Southern District of New York, on July 20, 1921, which your petitioners crave leave may be taken as part of this petition.

6. Your petitioners further show that thereafter, following the proceedings had in the District Court of the United States for the Southern District of New York, more fully shown in "Exhibit B" annexed to this petition, one J. Baird Simpson, one of the petitioning creditors in the said proceedings taken in the Southern District

of New York, having an alleged claim of sixty-six dollars and seventy-five cents (\$66.75), petitioned the District Court of the United States for the District of New Jersey, and upon proceedings had in that court to the end that, by order of the District Court of the United States for the District of New Jersey, on July 19, 1921, a certified copy of which order is hereto annexed and made a part hereof, Henry A. Wise and Joseph P. Tumulty were appointed temporary receivers of the said The Pusey and Jones Company in the District of New Jersey.

7. Your petitioners further show that the order appointing the said Henry A. Wise and Joseph P. Tumulty receivers as aforesaid, was invidently entered by the District Court for the District of New Jersey, for the following reasons:

(A) That it was based upon proceedings had in the United States District Court for the Southern District of New York, which Court did not have jurisdiction to enter an order adjudging The Pusey and Jones Company bankrupt, for the reasons hereinbefore set forth in this petition:

(B) That there was no evidence produced before the District Court of the United States for the District of New Jersey, showing that it was absolutely necessary for the preservation of the estate of said alleged bankrupt in the Southern District of New York and in the District of New Jersey that receivers should be appointed to take charge of the property of said alleged bankrupt, after the filing of said petition and until it was dismissed or a trustee was qualified as all the property within the District of New Jersey was in the possession of your petitioners, as Receivers appointed by the District Court of the United States for the District of Delaware of The Pusey and Jones Company, and was then and is now being adequately preserved by your petitioners for the creditors and stockholders of The Pusey and Jones Company.

8. Your petitioners further show that no notice was given to them or to The Pusey and Jones Company of any intention to apply to the District Court of the United States for the District of New Jersey, for the order of July 19, 1921, appointing Henry A. Wise and Joseph P. Tumulty as receivers in bankruptcy of The Pusey and Jones Company. And your petitioners allege that said company was entitled to and should have received such notice, and was entitled to be heard with respect to the proceedings taken in the

537 District Court of the United States for the District of New Jersey, and your petitioners were likewise entitled to such notice and such hearing, as receivers for The Pusey and Jones Company, duly appointed by the District Court of the United States for the District of Delaware.

Your petitioners therefore pray that, for the reasons set forth in their petition, the order of this Court directing them to forthwith appear in the District Court of the United States for the Southern District of New York and in the District Court of the United States for the District of New Jersey, by petition or otherwise, in their own name as such receivers, or in the name of The Pusey and Jones

Company, and through the aid of counsel, to the end that all proper defense may be made to the petitions filed in each of the said District Courts; that the adjudication of bankruptcy aforesaid may be vacated and set aside; that the several orders appointing receivers in bankruptcy may be vacated and set aside; and that the petition in bankruptcy in the Southern District of New York may be dismissed by the Court; and obtain such other and further relief as may be necessary and proper in the premises.

And your petitioners as in duty bound will ever pray, etc. (Sgd.) Willard Saulsbury, (Sgd.) Chas. B. Evans, Receivers for The Pusey and Jones Co. (Sgd.) John P. Nields, of Counsel for Petitioners.

538 UNITED STATES OF AMERICA,
District of Delaware, ss:

Charles B. Evans being duly sworn according to law deposes and says that he is one of the petitioners who signed the foregoing petition; that he is thoroughly familiar with all the facts set forth in the annexed petition, and the same are true to the best of his knowledge and belief. (Sgd.) Charles B. Evans.

Subscribed and sworn to before me this 23d day of July, A. D. 1921. (Sgd.) C. R. Walsh, Deputy Clerk. [Seal.]

In the District Court of the United States for the District of Delaware.

No. 429. In Equity.

HANS KARLUF HANSEN, Complainant,

v.

THE PUSEY AND JONES COMPANY, Respondent.

And now, to wit, this twenty-third day of July, A. D. 1921, on reading and considering the foregoing petition of Willard Saulsbury and Charles B. Evans, Receivers of The Pusey and Jones Company, and the Exhibits annexed thereto, it is, upon motion of John P. Nields, Esq., of counsel for petitioners, ordered by the Court that the said petitioners be and they are hereby directed to forthwith appear in the District Court of the United States for the Southern District of New York and in the District Court of the United States for the District of New Jersey, by petition or otherwise, in their own

names as such Receivers, or in the name of The Pusey and Jones Company, as they may be advised, and through the aid of counsel, to the end that all proper defense may be made to the petitions filed in each of the said District Courts; and further to the end that the said adjudication in bankruptcy and the orders appointing Receivers in Bankruptcy may be vacated and set aside, and that the said Involuntary Petition in Bankruptcy may be dismissed, and that the petitioners herein, as Receivers of this Court, of and for The Pusey and Jones Company, may obtain such

other and further relief as may be necessary and proper in the premises, to conserve and preserve the property of The Pusey and Jones Company for its creditors and stockholders. (Sgd.) Hugh M. Morris, J.

EXHIBIT "A."

In the District Court of the United States for the District of Delaware.

No. 429. In Equity.

HANS KARLUF HANSEN, a Subject of the King of Norway, a Citizen of the Kingdom of Norway, and a Resident of Haugesund, Norway, Complainant,

v.

THE PUSEY AND JONES COMPANY, a Corporation Created and Existing under the Laws of the State of Delaware, a Citizen of said State and Resident of the District of Delaware, Respondent.

STATE OF DELAWARE,

County of New Castle, ss:

Clarence B. Lynch, of the City of Wilmington, New Castle County and State of Delaware, being duly sworn according to law, 540 deposes and says: I am the assistant treasurer of The Pusey and Jones Company, and have held that office since May, 1916, and as such I have full knowledge of the business of The Pusey and Jones Company. I first entered the employ of the said Company in July, 1908, and have continued in the service of said company until the present time.

For the period of more than six months preceding the nineteenth day of July, A. D., 1921, the principal and practically the sole active business of The Pusey and Jones Company has been conducted at Front and Poplar Streets, in the City of Wilmington and State of Delaware. The Pusey and Jones Company has two plants, one at Gloucester, New Jersey, and one at Wilmington, Delaware. Since on or before the month of November, A. D. 1920, the Gloucester plant of The Pusey and Jones Company has been closed down. The entire protection and conservation of the Gloucester plant has been in the hands of Willard Saulsbury and Charles B. Evans, Receivers of The Pusey and Jones Company.

From my intimate knowledge of the business of The Pusey and Jones Company, and my continued employment by it, I state that the principal place of business of The Pusey and Jones Company is at Front and Poplar Streets, in the City of Wilmington, in the State and District of Delaware, and has been for the period of more than six months prior to July 19, 1921. During a period of more than six months last past, the business of The Pusey and Jones Company has been the making of paper machinery and the repair of such machinery, and the repair of boats. All of this business was

done at the Wilmington plant of The Pusey and Jones Company, within the District of Delaware.

In the Equity Suit No. 429, in the District Court of the United States for the District of Delaware, the Answer of The Pusey and Jones Company in the case of Hans Karluf Hanssen, complainant, against The Pusey and Jones Company, respondent, was filed June 18, 1921. I am the Clarence B. Lynch who verified this answer.

This answer states, inter alia, as follows:

"(3) This respondent denies that its principal office or place of business is or has been in the City of Wilmington, Delaware, but admits that it has an office and place of business there.

(4) Respondent alleges that its principal place of business is in the City, County and State of New York."

On June 18, 1921, I was called from the office of The Pusey and Jones Company to the office of Robert Pennington, Esq. I there met Mr. Chester N. Farr, Jr., the attorney for The Pusey and Jones Company. I was shown the paper purporting to be the answer of The Pusey and Jones Company, and read the same. I directed the attention of Mr. Farr to paragraphs 3 and 4 of the answer above recited, and questioned the truth of the same. I hesitated and objected to verifying this answer. I was induced to verify the answer upon the assurance of Mr. Farr that it was all right. (Sgd.) Clarence B. Lynch.

Subscribed and sworn to before me this twenty-third day of July, A. D. 1921. [Seal.] (Sgd.) Harry B. Stradley, Notary Public.

542

EXHIBIT "B."

United States District Court, Southern District of New York.

In the Matter of THE PUSEY AND JONES COMPANY, Alleged Bankrupt.

Petition for Involuntary Bankruptcy.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The petition of George F. Pawling & Company, a corporation organized and existing under the laws of the State of Pennsylvania, C. J. Rainear and J. B. Simpson, assignee of the claim of R. D. Wood & Co., respectfully shows, upon information and belief:

I. The said The Pusey and Jones Company, for the greater portion of the six months next immediately preceding the date of the filing of this petition, had its principal place of business at No. 139 Broadway and elsewhere in the Borough of Manhattan, in the City of New York; and is neither a wage-earner nor a person engaged in farming or the tillage of the soil, nor is it a municipal, railroad, insurance or banking corporation.

II. The said alleged bankrupt is insolvent and owes debts to the amount of upwards of five million dollars (\$5,000,000).

III. Your petitioners are creditors of the said alleged bankrupt and have provable claims against it amounting in the aggregate, in excess of securities held by them, to the sum of upwards of one hundred thousand dollars (\$100,000), and your petitioners
543 are not entitled to priority on their said claims within the meaning of the National Bankruptcy Act of 1898, nor have your petitioners received a preference within the meaning of the said Act.

IV. The nature and amount of your petitioners' claims are as follows:

(a) The claim of your petitioner, George F. Pawling & Company is for work, labor and services and materials furnished to the alleged bankrupt during the years 1917, 1918, 1919 and 1920, at the agreed price and of the reasonable value of one hundred thousand dollars (\$100,000). No part of the said sum has been paid and the whole amount thereof now remains due, owing and unpaid from the alleged bankrupt to your petitioner, George F. Pawling & Company.

(b) The claim of your petitioner, C. J. Rainear is for work, labor and services and materials furnished to the alleged bankrupt during the years 1920 and 1921 for the agreed price and reasonable value of one hundred seventy-six and 67/100 dollars (\$176.67), no part of which said sum has been paid and the whole amount thereof now remains due and owing and unpaid from the alleged bankrupt to said C. J. Rainear.

(c) The claim of your petitioner, J. B. Simpson, is for the sum of sixty-six and 75/100 dollars (\$66.75) on an assigned claim of R. Devord & Co., for work, labor and services and materials furnished to the alleged bankrupt during the years 1920 and 1921 for the said sum. No part of the same has been paid and the whole amount thereof now remains due, owing and unpaid.

V. Within four months next immediately preceding the date of the filing of this petition, the said alleged bankrupt was and still is insolvent and while so insolvent, committed various acts of
544 bankruptcy, as follows:

(a) Within the said period of four months and upon the application of Hans Karluf Hanssen, claiming to be a creditor and stockholder of The Pusey and Jones Company, Receivers were appointed of the property of the said The Pusey and Jones Company because of such insolvency. Such Receivers, Messrs. Willard Saulsbury and Charles B. Evans, of Wilmington, Delaware, have been put in charge of the property of the alleged bankrupt in a proceeding instituted before the United States District Court, for the District of Delaware, for the appointment of Receivers on the ground of insolvency, pursuant to paragraph 3883 of the Statutes of Delaware, known as the Delaware Code, reading as follows:

"Whenever a corporation shall be insolvent, the Chancellor, on the application and for the benefit of any creditor or stockholder thereof, may, at any time, in his discretion, appoint one or more persons to be receivers of and for such corporations, to take charge of the estate, effects, business and affairs thereof, and to collect the outstanding debts, claims, and property due and belonging to the com-

pany, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by such corporation and may be necessary and proper; the powers of such receivers to be such and continued so long as the Chancellor shall think necessary; provided, however, that the provisions of this section shall not apply to corporations for public improvement."

Such Receivers were appointed by said District Court by order dated the ninth day of June, 1921.

545 (b) Within the said period of four months the said alleged bankrupt made payments of money and transferred property to its creditors, to wit:

To Nagler Brothers, payment of the sum of one thousand two hundred and fifty dollars (\$1,250);

To David Baird, payment of the sum of three thousand dollars (\$3,000);

To Finn Hannevig, payment of the sum of fifteen hundred dollars (\$1,500);

To Christopher Hannevig, payment of the sum of two thousand dollars (\$2,000);

with intent to prefer such creditors over its other creditors of the same class.

VI. The creditors of the said alleged bankrupt are less than twelve in number.

Wherefore your petitioners pray that service of a subpoena may be made on the said alleged bankrupt as provided by the National Bankruptcy Act of 1898 and that it may be adjudged a bankrupt within the purview of the said Act. Dated New York, July 18th, 1921. George F. Pawling & Company, by Geo. F. Pawling, George F. Pawling, President. C. J. Rainear, Trading as C. J. Rainear & Co. J. B. Simpson.

546 STATE OF NEW YORK.

City of New York, County of New York, ss:

George F. Pawling, being duly sworn, deposes and says: that he is an officer, to wit, President of the George F. Pawling & Company, the petitioner named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. Geo. F. Pawling.

Sworn to before me this July 18th, 1921. [Seal.] Robert O'Connor, Notary Public, Bronx Co., 23. Certificate filed in New York Co. Number 140.

STATE OF PENNSYLVANIA.

City of Philadelphia, County of Philadelphia, ss:

C. J. Rainear, being duly sworn, deposes and says: That he is one of the petitioners named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of

his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true. C. J. Rainear.

Sworn to before me July 18th, 1921. [Seal.] Geo. H. Rapson, Notary Public. Commission expires March 30, 1923.

547 **STATE OF NEW YORK,**
City of New York, County of New York, ss:

J. B. Simpson, being duly sworn, deposes and says: That he is one of the petitioners named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true. J. B. Simpson.

Sworn to before me July 18th, 1921. [Seal.] Mary Van Horn, Notary Public. New York County Clerk's No. 8. New York County Register's Nos. 2018, 29991.

(Endorsed: Petition for Involuntary Bankruptcy. U. S. District Court, S. D. of N. Y. Filed July 19, 1921, 11 A. M. Saul S. Myers, Attorney for Petng. Creditor, 60 Wall Street, New York.)

SOUTHERN DISTRICT OF NEW YORK, ss:

To The Pusey and Jones Company, in said district, Greeting:

For certain causes offered before the District Court of the United States of America within and for the Southern District of New York, as a Court of Bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden at the United States Court House and Post Office Building in said District,

on the nineteenth day of July, A. D. 1921, to answer to a petition filed by George F. Pawling and Company, etc., in our said court, praying that you may be adjudged a bankrupt, and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness, The Hon. Learned Hand, Judge of said court, and the seal thereof, at the Borough of Manhattan, the City of New York, this nineteenth day of July, A. D. 1921. [Seal.] Alex. Gilchrist, Jr., Clerk.

United States District Court, Southern District of New York.

In the Matter of THE PUSEY AND JONES COMPANY, Alleged Bankrupt.

ANSWER.

Now comes The Pusey and Jones Company and answers the petition for its involuntary bankruptcy herein as follows:

1. The alleged bankrupt admits the allegations contained in paragraph "I" of the petition for involuntary bankruptcy that The Pusey

and Jones Company had its principal place of business at No. 139 Broadway and elsewhere in the Borough of Manhattan in the City of New York, for the greater portion of the six months next immediately preceding the date of the filing of the said petition.

2. The alleged bankrupt admits the allegations contained in paragraph "I" of the said petition that it is neither a wage-earner nor a person engaged in farming or the tillage of the soil and that it is neither a municipal, railroad, insurance or banking corporation.

3. The alleged bankrupt admits the allegations contained in paragraph "II" of the said petition that it is insolvent and that it owes debts in the amount of upwards of five million dollars (\$5,000,000).

4. The alleged bankrupt admits the allegations contained in the third paragraph of the said petition that George F. Pawling & Co. is a creditor of the said alleged bankrupt, having a provable claim in excess of five hundred dollars (\$500) over and above all securities held by said George F. Pawling & Co., and further admits that the said George F. Pawling & Co. is not entitled to priority on its said claim and that it has not received a preference.

5. The said alleged bankrupt admits that within four months next immediately preceding the date of the filing of this petition (a) upon the application of Hans Karluf Hanssen, claiming to be a creditor and stockholder of The Pusey and Jones Company, Receivers were appointed of the property of the said The Pusey and Jones Company because of such insolvency. Such Receivers, Messrs. Willard Saulsbury and Charles B. Evans, of Wilmington, Delaware, have been put in charge of the property of the alleged bankrupt, in a proceeding instituted before the United States District Court for the District of Delaware, for the appointment of Receivers on the ground of insolvency pursuant to section — of the Statutes of Delaware, known as the Delaware Code, reading as follows:

550 "Whenever a corporation shall be insolvent, the Chancellor, on the application and for the benefit of any creditor or stockholder thereof, may, at any time, in his discretion, appoint one or more persons to be receivers of and for such corporation, to take charge of the estate, effects, business and affairs thereof, and to collect the outstanding debts, claims and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by such corporation and may be necessary and proper; the powers of such receivers to be such and continued so long as the Chancellor shall think necessary; provided, however, that the provisions of this Section shall not apply to corporations for public improvement."

Such receivers were appointed by said District Court by order dated the 9th of June, 1921.

(b) Within the said period of four months the said alleged bankrupt made payments of money and transferred property to its creditors, to wit:

To Haglar Bros., payment of the sum of twelve hundred fifty dollars (\$1,250);

To David Baird, payment of the sum of three thousand dollars (\$3,000);

To Finn Hannevig, payment of the sum of fifteen hundred dollars (\$1,500);

To Christoffer Hannevig, payment of the sum of two thousand dollars (\$2,000);

with intent to prefer such creditors over its other creditors of the same class.

551 6. Said alleged bankrupt admits the allegations contained in paragraph "VI" of the said petition that the creditors of the said alleged bankrupt are less than twelve (12) in number.

Dated July 18, 1921. Chester N. Farr, Jr., Attorney for The Pusey and Jones Company.

Real Estate Trust Bldg., Philadelphia, Pa.

STATE OF CONNECTICUT,

County of Fairfield, ss:

New Canaan.

Hartwell Cabell, being duly sworn, deposes and says:

That he is a director of The Pusey and Jones Company, the alleged bankrupt referred to in the annexed answer; that he is also a member of the executive committee of the board of directors of the said The Pusey and Jones Company; that he has read the annexed answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

The reason that this verification is made by deponent and not by the alleged bankrupt is that the alleged bankrupt is a corporation and deponent is one of its directors and a member of its executive committee as aforesaid. Hartwell Cabell.

Sworn to before me this 18th day of July, 1921. [Seal.] Robert B. Morse, Notary Public.

My commission expires February 1, 1924. 29991.

552 (Endorsed: Answer. U. S. District Court, S. D. of N. Y.

In the matter of The Pusey and Jones Company, alleged bankrupt. Filed July 19, 1921, 11 A. M.) Chester N. Farr, Jr., Attorney for The Pusey and Jones Co.

Real Estate Trust Bldg., Philadelphia, Pa.

In the District Court of the United States for the Southern District of New York. In Bankruptcy.

In the Matter of THE PUSEY AND JONES COMPANY, Alleged Bankrupt.

At New York City in said district, on the nineteenth day of July, A. D. 1921, before the Honorable Martin T. Manton, Circuit Judge

of the said Court in Bankruptcy, the petition of George F. Pawling Company, a corporation organized and existing under the laws of the State of Pennsylvania, C. J. Rainear and J. B. Simpson that The Pusey and Jones Company be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy having been heard and duly considered and the alleged bankrupt having filed an answer admitting the allegations of the said petition the said The Pusey and Jones Company is hereby declared and adjudged bankrupt accordingly.

And it is further ordered that the said bankrupt file schedules in triplicate as required by law within ten days from the date hereof.

553 And it is further ordered that the said matter be referring to Seaman Miller, one of the referees in bankruptcy of this court, to take all such further proceedings therein as are required by the said Acts of Congress, and all such acts therein as the court might make or perform, except such as by the law or the general orders of the Supreme Court are required to be performed by the Judge; and that the said bankrupt shall attend before said referee on the — day of — 192-, at ten o'clock A. M., and thenceforth shall submit to such orders as may be made by said referee or by the court relating to said bankruptcy.

Witness, the Honorable Martin T. Manton, Circuit Judge of the said court, and the seal thereof, at the City of New York, in said District, on the nineteenth day of July, A. D. 1921. Martin T. Manton, Circuit Judge.

(Endorsed: Adjudication of Bankruptcy and Order of Reference. U. S. District Court, S. D. of N. Y. Filed July 19, 1921, 11 A. M.)

554 At a stated term of the United States District Court, for the Southern District of New York, held at the Courtroom thereof, Post Office Building, Borough of Manhattan, New York City, on the nineteenth day of July, 1921.

Present: Hon. Martin T. Manton, Circuit Judge.

In Bankruptcy. No.

In the Matter of THE PUSEY AND JONES COMPANY, Alleged Bankrupt.

Whereas, an involuntary petition in bankruptcy has this day been duly filed in the office of the clerk of this court, against the above-named alleged bankrupt, and it appearing that a subpoena has duly been issued against said alleged bankrupt, as required by law, and upon reading and filing the annexed petition of George F. Pawling and a bond of the said petitioning creditor having been duly filed and approved; and it appearing that the granting of this order is necessary to preserve the assets of the above-named alleged bankrupt.

Now, it is, on motion of Saul S. Myers, attorney for said petitioning creditor, and the answer of the alleged bankrupt.

Ordered, that Henry A. Wise be and he hereby is appointed temporary receiver of all goods, wares and merchandise, accounts, account books, chattels, choses in action, real estate and all other property of whatsoever nature and where-soever located, belonging to or being the property of or in the possession of the above-named alleged bankrupt; and it is further

555 Ordered, that said Receiver give a sufficient bond to the people of the United States in the sum of twenty-five thousand dollars (\$25,000) conditioned for the faithful performance of his duties as such Receiver; and it is further

Ordered, that said Receiver be and he is hereby empowered forthwith to take possession of all property of whatsoever nature and wheresoever located, now owned by or in the possession of said alleged bankrupt, and of all and any property wheresoever located and of whatsoever nature, being the property of said alleged bankrupt and in the possession of any agent, servant, officer, or representative of said alleged bankrupt, and said Receiver is authorized to do all and any such acts and take all and any such proceedings as may enable him forthwith to obtain possession of all and any such property; and it is further

Ordered, that all persons, firms and corporations, including said alleged bankrupt, and all attorneys, agents, officers and servants of said alleged bankrupt forthwith deliver to said Receiver all property of whatsoever nature and wheresoever located, including merchandise, accounts, notes and bills receivable, drafts, checks, moneys, securities, and all other choses in action, account books, records, chattels, lands and buildings, life and fire and all other insurance policies in the possession of them, or any of them, and owned by the alleged bankrupt, and said alleged bankrupt is ordered forthwith to deliver to said Receiver all and any such property now in the possession of the said alleged bankrupt; and it is further

556 Ordered, that all persons, firms and corporations, including all creditors of said alleged bankrupt, and the representatives, agents, attorneys and servants of all such creditors, and all sheriffs, marshals and other officers, and their deputies, representatives and servants, are hereby enjoined and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer, or dispose of or in any way interfere with any property assets or effects in the possession of the said alleged bankrupt, or owned by said alleged bankrupt and in the possession of any officers, agents, attorneys or representatives of said alleged bankrupt, and all said persons are further enjoined from executing or issuing or causing the execution or issuance or the suing out of any court, of any writ, process, summons, attachment, replevin, or any other proceeding for the purpose of impounding or taking possession of or interference with any property owned by or in the possession of said alleged bankrupt, or owned by said alleged bankrupt and in the possession of any agents, servants, or attorneys of said alleged bankrupt; and it is further

Ordered, that all persons, firms and corporations be and they

hereby are enjoined from disturbing or interfering with gas, telephone service, heat, electrical service, water supply or any other utility of like kind, furnished to said alleged bankrupt, and are hereby enjoined from cutting off or discontinuing the furnishing of any such utilities to said alleged bankrupt except upon three days' notice in writing to said Receiver and all persons, firms or corporations owning, real or personal property, including any lands or buildings in which is located any property of said alleged bankrupt, are enjoined pending the further order of this court, from removing or interfering with any property of said alleged bankrupt.

Further ordered that Saul S. Myers be appointed attorney for the Receiver. Martin T. Manton, U. S. Circuit Judge.

557 United States District Court, Southern District of New York.

In the Matter of THE PUSEY AND JONES COMPANY, Alleged Bankrupt.

PETITION FOR THE APPOINTMENT OF A RECEIVER.

To the Honorable Judges of the United States District Court for the Southern District of New York:

The petition of George F. Pawling respectfully shows:

I. Your petitioner is the president of George F. Pawling & Company, a creditor of the alleged bankrupt herein to the extent of upwards of one hundred thousand dollars (\$100,000).

II. On July 14, 1921, your petitioner caused a petition to be filed in this court for the involuntary bankruptcy of said The Pusey and Jones Company.

III. On July 18, 1921, your petitioner caused the usual petitioning creditor's bond to be duly approved and filed herein.

IV. Your petitioner now prays for the appointment of a Receiver in bankruptcy of the assets of the estate herein and shows that such appointment is absolutely necessary for the preservation of the estate herein within the meaning and intent of section 2, subdivision 3, of the National Bankruptcy Act of 1898.

V. Your petitioner further shows that such appointment is absolutely necessary for the following reasons, among others:

(a) There is no unified control of the business affairs of the alleged bankrupt. The alleged bankrupt has its office in New York City. It has two large shipbuilding plants at Gloucester, 558 New Jersey, and it has another plant at Wilmington, Delaware, for the manufacture of paper machinery and for the building of ships.

All of the capital stock of The Pusey and Jones Company was prior to February 11, 1921, owned by one Christoffer Hannevig. On February 11, 1921, a petition for the involuntary bankruptcy of the said Christoffer Hannevig was duly filed in the United States District Court for the Southern District of New York, and Hon. Henry A. Wise and Thomas P. Hannagan, Esq., were duly ap-

pointed Receivers in bankruptcy of the assets of the said Christoffer Hannevig. Thereafter and on February 15, 1921, the said Christoffer Hannevig was duly adjudicated a bankrupt in the said court.

It was then discovered by the said Receivers in bankruptcy of the estate of Christoffer Hannevig that the said Christoffer Hannevig owned all of the capital stock of Christoffer Hannevig, Inc. Thereafter and on February 23, 1921, a petition for the involuntary bankruptcy of the said Christoffer Hannevig, Inc., was duly filed in the United States District Court for the Southern District of New York, and Hon. Henry A. Wise and Col. Thomas B. Felder were duly appointed Receivers in bankruptcy of the assets of the said Christoffer Hannevig, Inc. Thereafter and on March 14, 1921, the said Christoffer Hannevig, Inc., was duly adjudicated a bankrupt.

The Receivers in the matter of Christoffer Hannevig and the Receivers in the matter of Christoffer Hannevig, Inc., then appointed as their attorneys in the said respective bankruptcy proceedings Saul S. Myers and James N. Rosenberg, Esqs., and a thorough investigation into the affairs of the said estates was then undertaken.

559 It was then discovered by the said Receivers in the matter of Christoffer Hannevig and by the said Receivers in the matter of Christoffer Hannevig, Inc., and by their attorneys and it was the fact that although all of the capital stock of The Pusey and Jones Company was owned by said Christoffer Hannevig prior to February 11, 1921, he had prior to that time pledged and assigned that stock to various persons, including the Baltimore Dry Docks and Shipbuilding Company, Jefferson Insurance Company, North Atlantic Insurance Company and Liberty Marine Insurance Company.

It was also discovered at that time by the said Receivers and by the said attorneys and it was the fact that the assignments and pledges of the said stock were made by way of restitution for moneys misappropriated by the said Christoffer Hannevig belonging to the said Baltimore Dry Docks and Shipbuilding Company and to the said Jefferson Insurance Company, North Atlantic Insurance Company and Liberty Marine Insurance Company, amounting to several million dollars.

It was also discovered at that time by the said Receivers and by their attorneys and was the fact that although the said Christoffer Hannevig had been adjudicated a bankrupt he was still in control of the board of directors of The Pusey and Jones Company and was still its president, drawing a very large salary, and that relatives and friends of his were holding high positions in the company and also enjoying large salaries; and it was felt by the said Receivers that it would be detrimental to the interests of the creditors of the said Christoffer Hannevig, and the interests of the creditors of the said Christoffer Hannevig, Inc., to allow the affairs of The Pusey and Jones Company to continue in that position.

560 At this time important creditors of Christoffer Hannevig and of Christoffer Hannevig, Inc., were pressing the said Re-

ceivers to have Receivers appointed of The Pusey and Jones Company, believing that such appointment was absolutely necessary to preserve the estate and to straighten out the stock entanglement.

In this condition of affairs an agreement was entered into dated March 18, 1921, wherein and whereby the board of directors of The Pusey and Jones Company was reconstituted as follows:

Henry A. Wise, Receiver in bankruptcy of Hannevig, his nominee or successor in office;

Hartwell Cabell, representing the Insurance Departments, or his successor appointed by them;

Laurence Leonard or other representative of the United States Shipping interest;

George Weems Williams or other nominee of the Baltimore Dry Docks and Shipbuilding Company or a successor to be chosen as hereinafter provided;

William G. Cox, of Delaware.

It was further provided in the said agreement of March 18, 1921, that the said Baltimore Dry Docks and Shipbuilding Company might proceed with its action to recover seven hundred and fifty thousand dollars (\$750,000) from said Pusey and Jones Company, but that if it secured judgment it should not proceed to enforce payment of the same until November 1, 1921.

That agreement was duly approved by the United States District Court for the Southern District of New York, Hon. Julius M. Mayer presiding, by order dated March 22, 1921. Reference is hereby made to the said order and to the said agreement, the same being on 561 file in the office of the clerk of the above-named court.

Shortly after the entry of the said order the board of directors of The Pusey and Jones Company was reconstituted as agreed upon, and an executive committee was created, consisting of Hon. Henry A. Wise, Hartwell Cabell, Esq., and George Weems Williams, Esq., and a committee of two, consisting of Henry A. Wise and George Weems Williams, was appointed for the purpose of negotiating a settlement with the United States Shipping Board in respect of the claim of The Pusey and Jones Company against the United States Shipping Board Emergency Fleet Corporation amounting to approximately fourteen million dollars (\$14,000,000).

Thereafter negotiations were entered into by and between the said committee of two and representatives of the United States Shipping Board and matters had so progressed that the said committee had stated to representatives of the creditors of the Hannevig interests that there was prospect of a fair and prompt settlement of that claim.

While matters were in this condition and while everything was apparently running smoothly and satisfactorily to the creditors of The Pusey and Jones Company and to the creditors of the Hannevig interests, a bill of complaint was on June 9, 1921, filed in the United States District Court for the District of Delaware, by one Hans Karluf Hanssen against The Pusey and Jones Company praying for the appointment of Receivers of The Pusey and Jones Company, to take charge of the estate, effects, business and affairs of The Pusey

and Jones Company, etc., on the ground of its insolvency, under and by virtue of Section 3883 of the Code of Delaware.

On that bill of complaint and without any separate affidavits, and without notice to The Pusey and Jones Company or to any of
562 its creditors or to any of its stockholders, the Court, Hon.

Hugh Morris, District Judge, presiding, made an order on the same day appointing Hon. William Saulsbury, former United States Senator from Delaware, and Charles B. Evans, Esq., an attorney of Wilmington, Delaware, temporary Receivers of The Pusey and Jones Company, and those Receivers have qualified and entered upon the discharge of their duties as such Receivers and have taken possession and entire charge of all the assets and effects of The Pusey and Jones Company in the State of Delaware.

The said Hans Karluf Hanssen in filing the said bill of complaint claimed to be a creditor of The Pusey and Jones Company to the extent of six hundred and fifty thousand dollars (\$650,000) and claimed to hold a large amount of the capital stock of The Pusey and Jones Company, but your petitioner has been informed and verily believes that the said Hans Karluf Hanssen is neither a creditor nor a stockholder of The Pusey and Jones Company; and your petitioner begs leave to refer to the records in the said suit of Hans Karluf Hanssen against The Pusey and Jones Company, and begs to submit herewith as part of this application a certified copy of the entire record in that proceeding.

The sources of your petitioner's information and the grounds of his belief in respect of the statement that the said Hans Karluf Hanssen is neither a creditor nor a stockholder of The Pusey and Jones Company, are conversations had with Messrs. James B. Simpson and Wilbur Tusch, and an examination of the answer and answering affidavits in the said suit of Hans Karluf Hanssen against The Pusey and Jones Company.

The said order appointing temporary Receivers in the said Delaware suit required The Pusey and Jones Company to show
563 cause on June 18, 1920, why the Receivers should not be continued during the pendency of that cause. The matter came on duly to be heard on June 20, 1921, and was fully argued on both sides, and although all the briefs were submitted to Judge Morris on July 9, 1921, the court has not yet decided the matter, and the continuance of the said Receivers in the said Delaware suit is not only preventing a unified control of the affairs of The Pusey and Jones Company, but is forcing a condition of bankruptcy.

Your petitioner further shows that no Receivers have been appointed of the assets of The Pusey and Jones Company in the District of New Jersey, or in the District of New York, and that there is apparently no one in real charge of the principal asset of The Pusey and Jones Company, namely, the claim of approximately fourteen million dollars (\$14,000,000) against the United States Shipping Board Emergency Fleet Corporation. Your petitioner avers that the Receivers in the Delaware suit cannot proceed with the said adjustment with the Shipping Board which involves matters outside Dela-

ware, including a \$5,000,000 mortgage to said Shipping Board Corporation covering real estate in New Jersey and proceedings in the District of Columbia. That while the directors of The Pusey and Jones Company apparently and legally have the right to proceed with the collection of the said claim, their hands have to a large extent been tied by the injunction issued by Judge Morris which accompanied the appointment of temporary Receivers in the said Delaware suit, so that this valuable claim—the immediate collection of which is necessary in order to prevent the creditors of the Hannevig interest from themselves becoming financially embarrassed—is suspended in the air.

564 (b) The receivership in the Delaware suit has forced a condition of bankruptcy. The record of proceedings in the said Delaware suit show, your petitioner respectfully submits, that at the time of the appointment of temporary Receivers on June 9, 1921, The Pusey and Jones Company was able to pay all its maturity obligations and was in fact paying such maturing obligations as the same were presented for payment, except in the case of disputed items which were under consideration for settlement. The assets at that time consisted of two enormous plants in the State of New Jersey worth not less than one million dollars (\$1,000,000) and perhaps worth two million dollars (\$2,000,000) and costing far more than that; a plant in Wilmington, Delaware, worth certainly not less than two million dollars (\$2,000,000); that claim against the United States Shipping Board worth, aside from offsets of the United States Shipping Board, not less than fourteen million dollars (\$14,000,000) nearly two hundred thousand dollars (\$200,000) in bank and over two hundred thousand dollars (\$200,000) in good receivables. Against these The Pusey and Jones Company owed only its current obligations and some disputed claims. Now that Receivers have been appointed in Delaware, who have seized said bank deposits and receivables, the business affairs of The Pusey and Jones Company have been thrown into confusion. None of its creditors are being paid. The business has very perceptibly fallen off, the good-will has been seriously and perhaps irreparably damaged and the Receivers are not paying the claims of creditors; all of which has brought an unquestionable condition of bankruptcy.

(c) The appointment of Receivers in Delaware was secured by fraud and suppression of material facts. The said Hans 565 Karluf Hanssen is neither a creditor nor a stockholder of The Pusey and Jones Company nor was he a citizen of the United States of America at the time that he applied to Judge Morris for the appointment of Receivers. He suppressed the existence of the order of Judge Mayer dated March 22, 1921, which order expressly approved of the agreement of March 18, 1921, suspended the election of a trustee in bankruptcy of the Hannevig estates and directed all persons connected with the bankrupt to execute all papers necessary to effectually place the affairs of The Pusey and Jones Company under the control and management of the newly created board of directors.

(d) The appointment of Receivers in Delaware delays settlement with the United States Shipping Board Emergency Fleet Corporation. Your petitioner further show that he has been informed that the United States Shipping Board Emergency Fleet Corporation is now ready, willing and anxious to enter into negotiations looking to the settlement of all claims against it, including the claim of The Pusey and Jones Company. Such a settlement was about to be undertaken at the time of the appointment of such Receivers in Delaware and might well have been consummated by this time, if it had not been for the appointment of such Receivers in Delaware. Your petitioner further shows that the Delaware Receivers cannot properly make a settlement with the Shipping Board Corporation and could not effectively do so and said order appointing such Delaware Receivers is being continued on the strength of allegations by said Hanssen that said claim against said United States Shipping Board Emergency Fleet Corporation is of no considerable value as an offset but that there is a balance due the Shipping Board, thus disabling such Receivers from establishing the validity of the 566 claim; and your petitioners further show that the newly created board of directors cannot proceed to make such settlement because of the outstanding injunction issued by Judge Morris dated June 9, 1921.

Under those circumstances the creditors of The Pusey and Jones Company and the creditors of the Hannevig interests must necessarily suffer. The creditors of the Hannevig interests have claims running into many millions of dollars; in some instances the creditors are already financially embarrassed and in great need of ready cash. It is extremely important to the interests of those creditors that a settlement with the United States Shipping Board be arrived at at the earliest possible moment. Such a settlement, in view of the complications which have now set in, can only be arrived at by a single Receiver or trustee appointed in bankruptcy. The appointment of Receivers in Equity in Delaware, followed by appointment of similar Receivers in New Jersey and similar Receivers in New York will so greatly complicate the situation as to make it impossible to come to any settlement with the Shipping Board whose cross-claims include a \$5,000,000 mortgage on the New Jersey plants of The Pusey and Jones Company and the delay in coming to such a settlement cures to the benefit of the Shipping Board. Necessary witnesses are leaving the country, some have already left the country, others have died, others have gone into different occupations and cannot be located; and the longer the delay in settling with the Shipping Board, the greater the loss to The Pusey and Jones Company and to the Hannevig creditors.

VI. The assets in the State of New York are about as follows:
Seven hundred and fifty thousand dollars alleged to be on deposit with Christoffer Hannevig, doing business as Hannevig &
567 Company. This is the \$750,000 which The Pusey and Jones Company claims that Hannevig misappropriated from the funds of The Pusey and Jones Company. Hannevig claims that he

put it on deposit with the banking firm of Hannevig & Company. In addition to that The Pusey and Jones Company has in the City of New York office furniture, fixtures, paper, stationery, books, accounts receivable, bills receivable and other personal property, the exact amount of which is unknown at the present time, but which is believed to be in excess of \$5,000.

Dated New York, July 18, 1921. Geo. F. Pawling, Petitioner.

UNITED STATES OF AMERICA,

State of New York,

City of New York, County of New York, ss:

George F. Pawling, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition. That he has read the same and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. Geo. F. Pawling.

Sworn to before me this 18th day of July, 1921. Robert O'Connor, Notary Public, etc.

29991.

(Endorsed: U. S. District Court, S. D. of N. Y. In the matter of The Pusey and Jones Company, alleged Bankrupt. Filed July 19, 1921, 11 A. M.)

568 UNITED STATES OF AMERICA,

Southern District of New York, ss:

I, Alexander Gilchrist, Jr., clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the writings annexed to this certificate, viz.: the proceedings in the cause entitled In the Matter of The Pusey and Jones Company, Alleged Bankrupt, No. 29,991, except the petitioning creditor's cost bond in the amount of \$250 and the Receiver's bond in the amount of \$25,000 have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this twentieth day of July in the year of our Lord one thousand nine hundred and twenty-one, and of the independence of the said United States the one hundred and forty-sixth. (Sgd.) Alex. Gilchrist, Jr., Clerk. [Seal.]

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EXHIBIT "C."

At a Stated Term of the United States District Court for the District of New Jersey Held at the Court Rooms Thereof, County of Essex, Newark, New Jersey, on the 19th Day of July, 1921.

Present: Hon. Charles F. Lynch, Judge.

In Bankruptcy. No. —.

In the Matter of THE PUSEY AND JONES COMPANY, Bankrupt.

Whereas, an involuntary petition in bankruptcy has this day been duly filed in the office of the Clerk of the United States District Court, for the Southern District of New York, against the above named bankrupt, and it appearing that said bankrupt has been duly adjudicated as required by law, and upon reading and filing the annexed petition of J. Baird Simpson and a bond of the said petitioning creditor having been duly filed and approved; and it appearing that the granting of this order is necessary to preserve the assets of the above named bankrupt.

Now, it is, on motion of Saul S. Myers, Attorney for said petitioning creditor,

Ordered, that Henry A. Wise and Joseph P. Tumulty be and they are hereby appointed temporary receivers of all goods, wares and merchandise, accounts, account books, chattels, choses in action, real estate and all other property of whatsoever nature and wheresoever located, in the District of New Jersey, belonging to or being the property of or in the possession of the above named bankrupt; and it is further

570 Ordered, that said receivers give a sufficient bond to the people of the United States in the sum of twenty-five thousand dollars (\$25,000), conditioned for the faithful performance of his duties as such receivers; and it is further

Ordered, that said receivers be and they are hereby empowered forthwith to take possession of all property of whatsoever nature and wheresoever located, in the District of New Jersey now owned by or in the possession of said bankrupt, and of all and any property wheresoever located and of whatsoever nature, in the District of New Jersey, being the property of said bankrupt and in the possession of any agent, servant, officer, or representative of said bankrupt, and said receivers are authorized to do all and any such acts and take all and any such proceedings as may enable them forthwith to obtain possession of all and any such property; and it is further

Ordered, that all persons, firms and corporations, including said bankrupt, and all attorneys, agents, officers and servants of said bankrupt forthwith deliver to said receivers all property of whatsoever nature and wheresoever located, including merchandise, accounts, notes and bills receivable, drafts, checks, moneys, securities

and all other choses in action, account books, records, chattels, lands and buildings, life and fire and all other insurance policies in the possession of them or any of them, and owned by the bankrupt, and said bankrupt is ordered forthwith to deliver to said receivers all and any such property now in the possession of said bankrupt; and it is further

Ordered, that all persons, firms and corporations including all creditors of said bankrupt, and the representatives, agents, 571 attorneys and servants of all such creditors, and all sheriffs, marshals and other officers, and their deputies, representatives and servants, are hereby enjoined and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer or dispose of or in any way interfere with any property, assets or effects in the possession of the said bankrupt, owned by said bankrupt and in the possession of any officers, agents, attorneys or representatives of said alleged bankrupt, and all said persons are further enjoined from executing or issuing or causing the execution or issuance or the suing out of any Court, of any writ, process, summons, attachment, replevin, or any other proceeding for the purpose of impounding or taking possession of or interference with any property owned by or in the possession of said bankrupt, or owned by said bankrupt and in the possession of any agents, servants or attorneys of said bankrupt; and it is further

Ordered, that all persons, firms and corporations be and they hereby are enjoined from disturbing or interfering with gas, telephone service, heat, electrical service, water supply or any other utility of like kind, furnished to said bankrupt, and are hereby enjoined from cutting off or discontinuing the furnishing of any such utilities to said bankrupt except upon three days' notice in writing to said receiver, and all persons, firms or corporations owning real or personal property, including any lands or buildings in which is located any property of said bankrupt, are enjoined pending the further order of this Court from removing or interfering with any property of said bankrupt. [Seal.] Charles F. Lynch, Judge. George T. Cranmer, Clerk, Per B. F. Havens, Deputy.

572 ORDER GRANTING LEAVE TO AMEND BILL.

[Filed July 29, 1921.]

And now, to wit, this twenty-ninth day of July, A. D. 1921, the motion of the complainant filed on the twentieth day of June, A. D. 1921, for leave to amend the bill of complaint filed in the above cause, having been duly considered, and the said complainant having, by leave of the Court, abandoned his said motion to amend in the particulars set forth under paragraph 2 of said motion, it is ordered by the Court that leave be and hereby is granted to amend the bill of complaint in this cause by adding at the end of paragraph numbered "7" the following:

"And complainant avers that at the time of filing the bill of com-

plaint in this cause and at all the times prior thereto when any of the transactions occurred that are alleged in said bill the said Christoffer Hannevig, Inc., was and is a corporation organized under and by virtue of the laws of the State of New York and a citizen and resident of said State, and the said Christoffer Hannevig was and is an alien, and a subject of the King of Norway and now residing therein, and the said Christoffer Hannevig, Inc., and Christoffer Hannevig were competent as such citizen and alien respectively to maintain suit in this Court against the said respondent for the enforcement of said indebtedness represented by said promissory notes, if no assignment or transfer had been made."

And it is further ordered by the Court that the said defendant file its answer to said amendment on or before the eleventh day of August, A. D. 1921. (Sgd.) Hugh M. Morris, J.

573 PETITION OF RECEIVERS FOR INSTRUCTIONS.

[Filed July 29, 1921.]

To the Honorable the Judge of said Court:

The petition of Willard Saulsbury and Charles B. Evans, receivers of said Court of and for said The Pusey and Jones Company, respondent herein, respectfully shows:

1. That on the twenty-first day of July, 1921, the opinion of this Court on the rule directed to the respondent requiring it to show cause why your petitioners should not be continued was filed, wherein it is found inter alia that the continuance of the receivers during the pendency of this cause is essential for the protection of the interests of the complainant and others in like position.

2. That on July 19, 1921, through alleged involuntary proceedings in bankruptcy instituted in the District Court of the United States for the Southern District of New York, the said The Pusey and Jones Company was adjudged a bankrupt by the last-named Court and on the same day Henry A. Wise was appointed by the same Court Receiver of the estate of said alleged bankrupt in the Southern District of New York, and the said Henry A. Wise and Joseph P. Tumulty, on the same day, were appointed receivers of the estate of the said alleged bankrupt in the District of New Jersey, all of which more fully appears by the representations of your petitioners to this Court in their petition presented to this Court on July 23, 1921. Although your petitioners are informed and believe the said adjudication of bankruptcy and appointments of receivers in this paragraph mentioned were improvidently made and
574 that neither of said Courts had jurisdiction in the premises, your petitioners deem it their duty to bring the same to the attention of this Court.

3. Your petitioners are uncertain as to the exact scope of the powers now conferred upon them to continue the business of the respondent company and they believe it would be for the best interest of the estate of the said company to have the Court define more

specifically the powers heretofore given them and to grant such further powers as may be necessary to meet present and future conditions.

4. Your petitioners aver that since their appointment as receivers they have conserved the receivership estate and continued the business of the respondent company insofar as in their opinion they found it necessary so to do. They now believe it is for the best interest of the creditors, stockholders and all other persons interested in the estate of The Pusey and Jones Company that your petitioners be given, among such further powers as the Court may deem necessary, power to collect the outstanding debts, claims and property due and belonging to The Pusey and Jones Company; power to enter into contracts and continue the business of The Pusey and Jones Company in accordance with the custom pertaining to business of like kind and the exigencies of similar business, and in general to operate the business of The Pusey and Jones Company and in the manner best calculated, in their opinion, to fully protect the trade and goodwill of the company, to the end that the business of the company may be preserved as well as its assets as a going concern.

Wherefore, your petitioners pray the Court for further instructions in reference to the further conduct of the business of
575 the respondent company and for proper relief in the premises. (Sgd.) Willard Saulsbury. (Sgd.) Charles B. Evans, Receivers of The Pusey and Jones Company. (Sgd.) John P. Nields, per W. G. M., (Sgd.) Wm. G. Mahaffy, Solicitors for Receivers.

STATE OF NEW YORK.

County of New York, ss:

Charles B. Evans, being duly sworn according to law, doth depose and say that he is one of the receivers of The Pusey and Jones Company and one of the petitioners in the foregoing petition and that he is familiar with the facts set forth in said petition and that the same are true according to his knowledge and belief. (Sgd.) Charles B. Evans.

Subscribed and sworn to before me this twenty-fifth day of July, A. D. 1921. [Seal] (Sgd.) Laura B. Penfield, Notary Public.

ORDER ON PETITION OF RECEIVERS FOR INSTRUCTIONS.

[Filed July 30, 1921.]

And now, to wit, this thirtieth day of July, A. D. 1921, upon reading and considering the annexed petition of Willard Saulsbury and

Charles B. Evans, Receivers of said Court of and for The
576 Pusey and Jones Company, after hearing counsel for the Receivers and for the respondent company, it is ordered by the Court that the said Receivers in executing the duties conferred upon them by the decree of this Court of June 9, 1921, be and hereby are authorized to collect the outstanding debts, claims and property due

and belonging to the said The Pusey and Jones Company, to enter into contracts and continue the business of said company in accordance with the customs and exigencies pertaining to business of like kind, and in general to operate the business of said company and in the manner best calculated, in the opinion of said Receivers, to fully protect the trade and good-will of said company, to the end that the business of the said company may be preserved, as well as its assets as a going concern. (Sgd.) Hugh M. Morris, J.

**PETITION OF RECEIVERS AND ORDER THEREON IN
VOLUNTARY PETITION IN BANKRUPTCY IN NEW
YORK.**

[Filed July 30, 1921.]

To the Honorable the Judge of the District Court of the United States for the District of Delaware:

The petition of Willard Saulsbury and Charles B. Evans, Receivers of said Court of and for The Pusey and Jones Company, respondent herein, respectfully shows by way of supplement to the petition filed in the said Court on July 23, 1921, as follows:

1. That since the filing of their said petition and the entry of an order of this Court thereon, directing your petitioners to forthwith appear in the District Courts of the United States for the Southern District of New York and the District of New

Jersey, and make defense to the involuntary proceedings in bankruptcy recited in said petition, your petitioners discovered that on the twenty-fifth day of July, A. D. 1921, at 9 o'clock A. M., an alleged voluntary petition in bankruptcy was filed by the said The Pusey and Jones Company, through Hartwell Cabell, representing himself to be one of the directors of said company, and on the same day, the District Court of the United States for the Southern District of New York declared and adjudged the said The Pusey and Jones Company bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy, and your petitioners annex hereto, marked Exhibit "A," a certified copy of said alleged voluntary petition in bankruptcy, and marked Exhibit "B," a certified copy of said adjudication in bankruptcy, and ask that the same may be taken as part of this petition.

2. Your petitioners are informed and believe that the said The Pusey and Jones Company at the time of the filing of the said voluntary petition in bankruptcy, was without any power or authority so to do, and that the said adjudication of bankruptcy was improperly made, and that the said District Court of the United States for the Southern District of New York had no jurisdiction to make and enter the said adjudication of bankruptcy, in that the said The Pusey and Jones Company had not had its principal place of business, resided or had its domicile within the territorial jurisdiction of the Southern District of New York for the preceding six months or the greater portion thereof, prior to the filing of the said volun-

tary petition in bankruptcy. And your petitioners further show that the said The Pusey and Jones Company, at the time the said voluntary petition was filed, and for more than six months prior thereto, had its principal place of business in the city of Wilmington, in the District of Delaware, and resided and had its domicile within the District of Delaware.

Your Petitioners Therefore Pray that, for the reasons set forth in their petition, this Court order and direct your petitioners to make all proper defense to the said voluntary petition in bankruptcy, to the end that the said adjudication in bankruptcy may be vacated and set aside, and that the said voluntary petition in bankruptcy may be dismissed, and that your petitioners may obtain such other and better relief as may be necessary and proper in the premises.

And your petitioners as in duty bound will ever pray, etc. (Sgd.) Willard Saulsbury, (Sgd.) Charles B. Evans, Receivers for The Pusey and Jones Company, By (Sgd.) Wm. G. Mahaffy, Their Solicitors, (Sgd.) John P. Nields, (Sgd.) Wm. G. Mahaffy, Solicitors for Receivers.

UNITED STATES OF AMERICA,
District of Delaware, ss:

William G. Mahaffy, being duly sworn according to law, deposes and says that he is one of the solicitors for Willard Saulsbury and Charles B. Evans, Receivers of The Pusey and Jones Company, and the petitioners in the foregoing petition; that he is familiar with the facts set forth therein, and that the same are true to the best of his knowledge and belief. That this affidavit is made by deponent because the said Receivers are now temporarily absent from the District of Delaware, and that the grounds of the knowledge and belief of this affiant is a personal examination of the records of the District Court of the United States for the Southern District of New York, in connection with the certified exhibits annexed to said petition. (Sgd.) Wm. G. Mahaffy.

Subscribed and sworn to before me this thirtieth day of July, A. D. 1921. [Seal.] (Sgd.) C. R. Walsh, Deputy Clerk U. S. District Court, District of Delaware.

ORDER.

And now, to wit, this thirtieth day of July, A. D. 1921, on reading and considering the foregoing petition of Willard Saulsbury and Charles B. Evans, Receivers of The Pusey and Jones Company, and the exhibits annexed thereto, it is, on motion of John P. Nields, Esq., and William G. Mahaffy, Esq., solicitors for the petitioners, ordered by the Court that the said petitioners be and they hereby are authorized and directed to make all proper defense to the voluntary petition in bankruptcy recited in said petition, by petition or otherwise, as they may be advised, and through the aid of counsel to the end that the said adjudication of bankruptcy may be vacated and set aside, and that the said voluntary petition in bankruptcy may be dis-

missed, and that the said petitioners may obtain such other and further relief as may be necessary and proper to conserve and preserve the property of The Pusey and Jones Company for its creditors and stockholders. (Sgd.) Hugh M. Morris, J.

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EXHIBIT "A."

To the Honorable Judges of the United States District Court for the Southern District of New York:

The petition of The Pusey and Jones Company of the City of New York, in the County of New York, and Southern District and State of New York, respectfully represents:

1. That it is a corporation created, organized and existing under and by virtue of the laws of the State of Delaware and is not a municipal, railroad, insurance or banking corporation. That it has had its principal place of business for the greater portion of six months next immediately preceding the filing of this petition at No. 139 Broadway and elsewhere within said judicial district. That it owes debts which it is unable to pay in full; that it is willing to surrender all of its property for the benefit of its creditors, except such as is exempt by law and desires to obtain the benefit of the acts of Congress relating to bankruptcy.

2. That the Schedule hereto annexed marked "A" and verified by the oath of Hartwell Cabell contains a full and true statement of all the debts of The Pusey and Jones Company (so far as it is possible to ascertain) the names and places of residence of its creditors and such further statements concerning said debts as are required by the provisions of said acts.

3. That the Schedule hereto annexed marked "B" and verified by the oath of Hartwell Cabell contains an accurate inventory of all the property of the said The Pusey and Jones Company, both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

4. That at a meeting of the Executive Committee of the Board of Directors of The Pusey and Jones Company, duly called and held on July 23, 1921, at which all of the members of the Executive Committee of the Board of Directors were present or had
581 signed waivers, the following preamble and resolution were duly and unanimously adopted, namely:

"Whereas the Pusey and Jones Company is unable to pay its debts and is insolvent within the meaning of the acts of Congress relating to bankruptcy;

"Resolved that this corporation petition the United States District Court for the Southern District of New York for its adjudication as a bankrupt and that Hartwell Cabell, one of the directors of The Pusey and Jones Company, be and he hereby is authorized and directed to make, verify and file all such petitions, schedules and other papers as may be requisite or necessary to procure such adjudication."

Wherefore your petitioner prays that it may be adjudged by the Court to be a bankrupt within the purview of said acts. The Pusey and Jones Company, by Hartwell Cabell, Petitioner.

UNITED STATES OF AMERICA,

District of Connecticut, County of Fairchild, ss:

I, Hartwell Cabell, one of the Directors of The Pusey and Jones Company, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true, according to the best of my knowledge, information and belief. Hartwell Cabell.

Subscribed and sworn to before me this 23d day of July, 1921. Robert B. Morse, Notary Public. [Seal.]

[Filed July 25, 1921, 9 A. M.]

582 1001.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE A. (1), No. —.

Statement of All Debts of Bankrupt.

Statement of All Creditors Who Are To Be Paid in Full or to Whom Priority is Secured by Law.

Claims which have priority.	Amount.	
	Dollars.	Cents.
1. Taxes and debts due and owing the United States		None.
2. Taxes due and owing to the State of New Jersey, or to any County, District or Mu- nicipality there- of.	There are certain taxes due to the City of Gloucester in the State of New Jersey, but your petitioner does not know the amount thereof.....	
		Unknown.
3. Wages due work- men, Clerks or Servants, to an amount not ex- ceeding \$300 each, earned within three months before filing the pe- tition.	The Pusey and Jones Com- pany owes the Gloucester pay- roll for the week ending July 22, 1921. The Company does not know at this time the amount of such payroll, but believes it to be about \$800..	
		800.00

Claims which have priority.	Amount.	
	Dollars.	Cents.
4. Other Debts hav- ing priority by law.....		None.
Total	\$800.00	

Insert in all cases, ledger page, names of creditors and their residence, if known, or unknown, so state, when and where debt was contracted; nature and consideration of the Debt, and whether contracted as partner or joint contractor, and if so, with whom. The Pusey and Jones Company, Petitioner, by Hartwell Cabell.

This Schedule must be executed in triplicate.

583 1002.—Schedule in Bankruptcy. Julius Blumberg, Printer. Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE A (2), No. —.

Creditors Holding Securities.

(N. B.—Particulars of Securities held, with dates of same, and when they were given, to be stated under the names of the several Creditors, and also particulars concerning each Debt, as required by the Acts of Congress relating to Bankruptcy, whether contracted as partner or joint-contractor with any other person; and if so, with whom.)

	Value of securities.		Amount of debts.	
	Dollars.	Cents.	Dollars.	Cents.
1. The United States Shipping Board Emergency Fleet Corporation, 45 Broadway, New York, N. Y., owns and holds a mortgage of about \$5,000,000 covering the properties of the Pusey and Jones Company, located at Wil- mington, Delaware, and at Glou- cester, New Jersey. The United States Shipping Board Emer- gency Fleet Corporation claims to be a creditor of the estate herein to the extent of about \$7,000,000, whereas the cred- itors of the estate herein claim				

	Value of securities.		Amount of debts.	
	Dollars.	Cents.	Dollars.	Cents.
that the United States Shipping Board Emergency Fleet Corporation is a debtor of the estate herein to the extent of about \$14,000,000
2. David Baird, Jr., 425 N. Delaware Ave., Camden, State of New Jersey, holds a mortgage of \$150,000 covering a portion of the property of the alleged bankrupt at Gloucester, New Jersey. This mortgage is past due	150,000	.....
3. Baltimore Dry Docks & Shipbuilding Company, c/o George Weems Williams, Maryland Trust Bldg., Calvert and Redwood Sts., Baltimore, Maryland, holds a judgment against the alleged bankrupt, now a lien on all of the real property of the alleged bankrupt, to the extent of approximately	800,000	.....
Total	\$950,000	.....

Insert in all cases, ledger pages names of creditors and their residence if known, if unknown, so state; also full description of securities, when and where debts were contracted. The Pusey and Jones Company, Petitioner, by Hartwell Cabell.

This Schedule must be executed in triplicate.

584 1003.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE A (3), No. —.

Creditors Whose Claims Are Unsecured.

(N. B.—When the name and residence (or either) of any drawer, Maker, Endorser or Holder of any Bill, or Note, etc., are unknown, the facts must be stated; and also the name and residence of the last Holder known to the Debtor. The Debt due to each Creditor must be stated in full, and any claim by way of Set-off stated in the Schedule of Property.)

	Amount.	
	Dollars.	Cents.
1. Addy, Matthew Co., Cincinnati, Ohio.....	2,448	00
2. Addressing Machine Co., Buffalo, N. Y.....	6	18
3. American Brass Co., Ansonia, Conn.....	3,753	53
4. Ames, B. C., Waltham, Mass.....	3	11
5. Amer. Shop Equipment Co., McCormick Bldg., Chicago, Ill.....	2,225	00
6. Amer. Locomotive Co., 30 Church St., New York, N. Y.....	131	00
7. Amer. Woodworking Mach. Co., Rochester, New York.....	24	69
8. Andrews, D. C. & Co., Inc., Philadelphia, Pa..	173	12
9. Atlantic & Gulf Lumber Co.....	87	63
10. Atlantic Refining Co., Wilmington, Del.....	370	83
11. Atlas Car & Mfg. Co., 20 S. 15th St., Phila., Pa.	316	96
12. Beringer, Geo. M.....	7	37
13. Blackwood Foundry Co., Blackwood, N. J.....	290	08
14. Bradford Co., Wilmington, Del.....	3	24
15. Bulletin, Evening, Philadelphia, Pa.....	3	50
16. Cambria Steel Co., Phila., Pa.....	3	88
17. Camden Forge Co., Camden, N. J.....	1,296	22
18. Camden Machine Co., 111 Market St., Cam- den, N. J.....	12	95
19. Chicago Pneumatic Tool Co., New York City..	11	55
20. Consolidated Foundry Products, New York..	44	18
21. Connelly Bros.....	54	68
22. Central Iron & Steel Co., Harrisburg, Pa.....	151	39
23. Cramps, Wm., & Sons, Philadelphia, Pa.....	4,445	51
24. Craig, Finley & Co., Philadelphia, Pa.....	3	90
25. Crosby Steam Gauge & Valve, Boston, Mass...	6	59
26. Crozier Co., R. J., Philadelphia, Pa.....	33	39
27. Cttie Bros., Corp., Philadelphia, Pa.....	6	02
28. Cheney, Bigelow, Springfield, Mass.....	21	35
29. Davis, Geor. H., 39 S. 10th St., Philadel- phia, Pa.....	106	10
30. Delaware & Atlantic Tel. & Tel. Co., Camden, N. J.....	38	51
31. Delaware Electric & Supply Co., 211 Shipley Bldg., Wilmington, Del.....	26	15
32. Debevoise-Anderson Co.....	16	62
33. Domestic Laundry Co., Gloucester, N. J.....	2	02
34. De Haan Koshland, Phila., Pa.....	4	00
35. Delaware Electric Plating Co., Wilmington, Del.	18	78
36. Delaware Hardware Co., Wilmington, Del....	1	59

Insert in all cases, ledger page, names of creditors and their residence if known or unknown, so state, when and where debt was contracted; nature and consideration of the Debt, and whether any Judge

ment, Bond, Bill of Exchange, Promissory Note, etc., and whether contracted as partner or joint contractor or with any other person; and if so, with whom. The Pusey and Jones Company, Petitioner, by Hartwell Cabell.

This Schedule must be executed in triplicate.

385 1004.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

Schedule — (3 Continued), No. —.

Creditors Whose Claims Are Unsecured.

(N. B.—When the name and residence (or either) of any drawer, Maker, Endorser or Holder of any Bill, or Note, etc., are unknown, the facts must be stated; and also the name and residence of the last Holder known to the Debtor. The Debt due to each Creditor must be stated in full, and any claim by way of Set-off stated in the Schedule of Property.)

	Amount.	
	Dollars.	Cents.
37. Delaware Terra Cotta Co., Wilmington, Del...	59	50
38. Diamond Ice & Coal Co., Wilmington, Del...	25	43
39. Dietzen, Eugene, Co., New York City.....	55	82
40. Diamond State Telephone Co., Wilmington, Del.	371	78
41. Dillon Machine Co., Inc., Florence, Mass.....	93	31
42. Dual Welding Apparatus Co.....	23	53
43. Elwell Parker Electric Co., Cleveland, Ohio...	12	84
44. Empire Galvanizing Co., Philadelphia, Pa...	1	11
45. Farrell Foundry & Machine Co., Ansonia, Conn.	9,114	04
46. Fort Pitt Spring & Mfg. Co., Pittsburgh, Pa...	17	91
47. Foster Bros. Mfg. Co., Utica, N. Y.....	33	28
48. Freihofer Baking Co., Philadelphia, Pa.....	8	78
49. Garrett Miller & Co., Wilmington, Del.....	14	11
50. General Accident Co., Philadelphia, Pa.....	34	65
51. General Electric Co., Witherspoon Bldg., Phila., Pa.....	4,957	83
52. General Equipment Co., 30 Church St., New York, N. Y.....	822	32
53. Goodyear Tire & Rubber Co., Akron, Ohio...	69	00
54. Gulf Refining Co., Widener Bldg., Phila., Pa...	65	78
55. Gummey, McFarland & Co., 147 N. 10th St., Phila., Pa.....	17	00
56. Gurker Bros. & Hall, Phila., Pa.....	5	80
57. Gutta Percha & Rubber Mfg. Co., Philadel- phia, Pa.....	4	16

	Amount.	
	Dollars.	Cents.
58. Haines, Jones & Cadbury Co., Philadelphia, Pa.	100	59
59. Haines Lumber Co., Newberry, N. C.	36	17
60. Hearn Oil Co.	20	61
61. Haworth, John, Co., Phila., Pa.	5	96
Total	\$32,120	93
62. Hathaway Art Studio, Chillicothe, Ohio.	18	00
63. A. E. Hendricks Co., Inc., New York.	12	50
64. Henson & Co., Edw., Germantown, Phila., Pa.,	163	72
65. Hoffman Corr Mfg. Co., 312 Market St., Phila., Pa.	56	40
66. Herbert Bros., Phila., Pa.	100	98
67. Hunter, James, Machine Co., North Adams, Mass.	192	00
68. Industrial Education Pub. Co., Gardenville, P. Q., Canada.	24	00
69. Isherwood, J. M., New York.	2,631	10
70. Jamison Cold Storage Door Co.	3	00
71. Jolly & Co., J. H., 42 N. 5th St., Phila., Pa. ...	11	05
72. Juilliard, A. D.	16	85
73. Keller Pneumatic Tool Co., Grand Haven, Mich.	319	23

Insert in all cases, ledger page, names of creditors and their residence if known or unknown, so state, when and where debt was contracted; nature and consideration of the Debt, and whether any Judgment, Bond, Bill of Exchange, Promissory Note, etc., and whether contracted as partner or joint contractor or with any other person; and if so, with whom. The Pusey and Jones Company, Petitioner, by Hartwell Cabell.

This Schedule must be executed in triplicate.

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Schedule — (3 Continued), No. —.

Creditors Whose Claims Are Unsecured.

(N. B.—When the name and residence (or either) of any drawer, Maker, Endorser or Holder of any Bill, or Note, etc., are unknown, the facts must be stated; and also the name and residence of the last Holder known to the Debtor. The Debt due to each Creditor must be stated in full, and any claim by way of Set-off stated in the Schedule of Property.)

	Amount.
74. Keystone Heating & Equipment Co., 1317 S. Juniper St., Philadelphia, Pa.	986 01
75. Lewis & Roth, 13th & Wood St., Phila., Pa. ...	8,759 93
76. Liberty Mutual Ins. Co., Philadelphia, Pa. ...	9 88

	Amount.
77. Lock Regulator Co., Salem, Mass.....	77
78. London, Inc., N., New York.....	168 73
79. Lobdell Car Wheel Co., Wilmington, Del.....	350 98
80. McDowell & Co., Pittsburgh, Pa.....	625 73
81. Magneto Repair Station, Wilmington, Del.....	6 00
82. Manuly, John, 309 Arch St., Phila., Pa.....	307 78
83. Maurice, Wolf, New York.....	2 00
84. Midvale Steel Co., Widener Bldg., Phila., Pa.....	352 79
85. Milton Mfg. Co., Milton, Pa.....	61 53
86. Midvale Cambria Co., Widener Bldg., Phila., Pa.....	7 47
87. Midvale Steel & Ordnance Co., Widener Bldg., Phila., Pa.....	121 17
88. Mott Iron Works, J. L., Trenton, N. J.....	176 88
89. Moffat & Co., Frank D., New York.....	1,221 40
90. Moore & White Co., Phila., Pa.....	1,028 77
91. Murphy's Sons Co., Wm. F., Phila., Pa.....	4 50
92. Mohr & Son, J. J., Bullitt Bldg., Phila., Pa.....	142 11
93. National Fibre & Insulation Co., Yorklyn, Del.,	31 75
94. National Engineering Corp.....	125 97
95. New Jersey Wire Cloth Co., 223 Arch St., Phila., Pa.....	8 35
96. New Jersey Auto & Supply Co., Camden, N. J.,	36 10
97. New York Ship Building Co., Camden, N. J.,	24,689 99
98. Novelty Incan. Lamp Co., Emporium, Pa....	1,167 56
99. Northwestern Mfg. Co., Milwaukee, Wis.....	618 00
100. Pawling, Geo. F., 1432 S. Penn Square, Phila., Pa.....	100,000 00
101. Pawling & Harnischfeger Co., Milwaukee, Wis.....	339 04
102. Patterson Supply Co., W. M.....	22 75
103. Paul's Garage, 611 Broad St., Phila., Pa.....	26 25
104. Penna. Fire & Life Ins. Co., 420 Walnut St., Phila., Pa.....	168 25
105. Penna. R. R. Co., Wilmington, Del.....	1,636 67
106. Page Belting Co., Concord, N. H.....	3 93
107. Paxson Co., J. W., Phila., Pa.....	39 92
108. Paper Mill, The, New York.....	162 50
109. Phila. Chamber of Commerce, Phila., Pa.....	62 50

Insert in all cases, ledger page, names of creditors and their residence if known or unknown, so state, when and where debt was contracted: nature and consideration of the Debt, and whether any Judgment, Bond, Bill of Exchange, Promissory Note, etc., and whether contracted as partner or joint contractor or with any other person: and if so with whom. The Pusey and Jones Company, Petitioner, by Hartwell Cabell.

This Schedule must be executed in triplicate.

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Schedule A (3) Continued, No. 3.

Creditors Whose Claims Are Unsecured.

	Amount.	
	Dollars.	Cents.
110. Phoenix Iron Co., Phila., Pa.....	68	88
111. Porter, R. F., Agt., Phila., Pa.....	1	47
112. Powell Clouds & Co., Phila., Pa.....	1	74
113. Powers Acctg. Mach. Co., 50 Church St., N. Y. C.....	126	80
114. Public Service Gas Co., Newark, N. J.....	33	18
115. Quaker City Rubber Co., 629 Market St., Phila., Pa.....	9	99
116. Quigley Furnace Spec., Inc., New York, N. Y.,	36	00
Total	\$147,360	98
117. Randolph Clowes Co., Waterbury, Conn.....	3	96
118. Rensselaer Valve Co., Troy, N. Y.....	16	00
119. Rice, Barton & Fales Mach. & Iron Co., Wor- cester, Mass.....	3,800	00
120. Rich Tool Co., Railway Exch. Bldg., Chi- cago, Ill.....	750	00
121. Rogers, Brown & Co., Morris Bldg., Phila., Pa.	43	16
122. Royal Indemnity Co., 27 William St., New York City.....	6	16
123. Russell Burdsohl & Ward Bolt & Nut Co., Port- chester, New York.....	40	91
124. Simpson, Jas. B., Cranford, New Jersey, assign- ment claim R. D. Wood.....	66	75
125. Safety Insulated Wire & Cable, 112 Liberty St., N. Y. C.....	6	04
126. South Jersey Foundry Co., Blackwood, N. J...	12	03
127. Scranton Bolt & Nut Co., Scranton, Pa.....	6	63
128. Sipe & Co., Jas. B., Phila., Pa.....	105	42
129. Slattery Bros., Stephen Girard Bldg., Phila. Pa.	1	85
130. Shriver, Bartlett & Co.....	44	17
131. Sherwin-Williams Co., Delaware Ave., Phila., Pa.	295	65
132. Sherbrook Mach. Co., Ltd., Quebec, Canada..	3,585	00
133. Smith, Chas. M., Co., Wilmington, Del.....	30	
134. Snyder & Sons, W. L., Phila., Pa.....	44	25
135. Standard Supply & Equipment Co., 13 Cherry St., Phila., Pa.....	4	42
136. Stinson & Dickenshuts, Gloucester, N. J.....	15	44
137. Stirlith & Bros., Jas. A., Wilmington, Del....	104	10
138. Supplee & Wills-Jones Milk Co., Phila., Pa...	8	36
139. Rainear, C. J., & Co., 518 Arch St., Phila., Pa.,	176	67

	Amount.	
	Dollars.	Cents.
140. Ticonderoga Machine Wks., Ticonderoga, N. Y.....	4,446	90
141. Titan Metal Co., Bellefonte, Pa.....	30	04
142. Tower Bros. Stationery Co., New York City..	4	04
143. Turner Bros. Laundry, Wilmington, Del.....	15	67
144. Union Machine Co., Fitchburg, Mass.....	6	00
145. U. S. Aluminum Co., Pittsburgh, Pa.....	52	70
146. U. S. Smelting Works, 1615 Spring Garden St., Phila.....	1	85
147. Upson Walton Mfg. Co.....		78
148. Walsh, Inc., E. H., New York.....	7	61
149. Wanamaker, John, Phila., Pa.....	729	72
150. Warner, Chas., Wilmington, Del.....		50
151. Western Union Telegraph Co., Camden, N. J.,		35
152. Western Electric Co., Phila., Pa.....	1	50
153. Westinghouse Elec. & Mfg. Co., East Pitts- burgh, Pa.....	1,018	65
154. Wallworth & Co., 244 Arch St., Phila., Pa....	18	61
155. Weil & Co., J. H., Phila., Pa.....	2	50
156. Wilson Corp., The J. G., New York City....	791	00
157. Wilmington & Phila. Traction Co., Wilming- ton, Del.....	1,276	15
158. White & Son- Co., C. H.....	178	56
159. Wheeler & Co., C. H., 18th & Lehigh Ave., Phila.	2,725	80
160. T. B. Woods Sons Co., Chambersburgh, Pa....	14	96
Total	\$20,461	19

The Pusey and Jones Company, Petitioner, by Hartwell Cabell.

588 Schedule A (3) Continued, No. 4.

Creditors Whose Claims Are Unsecured.

	Amount.	
	Dollars.	Cents.
161. Hans Karluf Hanssen, c/o John P. Nileds, Counsellor at Law, Wilmington, Delaware.	650,000	00
(This claim is disputed but it is inserted in these schedules so that the alleged creditor will have notice of all proceedings.)		
162. Hill Rubber Co., 2214 Chestnut Street, Phila., Pa.	Unknown.	
163. Standard Underground Cable Co., North Amer- ican Bldg., Phila., Pa.....	Unknown.	

	Amount.	
	Dollars.	Cents.
164. McArdle and Cooney, 1123 Arch St., Philadelphia, Pa.....	Unknown.	
165. Harris, Candbury & Jones, Ridge Ave., Phila., Pa.	Unknown.	
Total	\$650,000	00

NOTE.—There are a large number of other creditors who have claims for current account, but the Pusey & Jones Co. is unable to give any further details at this time for the reason that all the books of account are in the possession of receivers appointed in Wilmington, Delaware, by Hon. Hugh Morris, on or about June 9, 1921. And the Pusey & Jones Company hereby prays for leave to file supplemental schedules as soon as it is possible to supply the Court with more detailed statements of the indebtedness. The Pusey and Jones Company, Petitioner, by Hartwell Cabell.

589 1005.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE A (4). No. —.

Liabilities on Notes or Bills Discounted Which Ought to be Paid by the Drawers, Makers, Acceptors, or Endorsers.

(N. B.—The dates of the Notes or Bills, and when due, with the Names, Residences, and the Business or Occupation of the Drawers, Makers or Acceptors thereof are to be set forth under the Names of the holders. If the Names of the Holders are not known, the Name of the last Holder known to the Debtor shall be stated and his business and place of residence. The same particulars as to Notes or Bills on which the Debtor is liable as Endorser.)

	Amount.	
	Dollars.	Cents.
There is a lot of customers' paper held by the Receivers of the estate in Delaware, which customers' paper may have been discounted with banks, but the Board of Directors of the Pusey and Jones Company is not in possession of any accurate information about this situation.....	Unknown.	
Total	Unknown.	

Insert in all cases ledger page, names of holders as far as known, if unknown, so state; their residence if known, if unknown so state; place where debt was contracted; nature of liability, whether same was contracted as partner or joint contractor, or with any other per-

son; and if so, with whom. The Pusey and Jones Company, Petitioner, by Hartwell Cabell.

This Schedule must be executed in triplicate.

590 1006.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE A (5), No. —.

Accommodation Paper.

(N. B.—The dates of the Notes or Bills, and when due, with the Names and Residences, of the Drawers, Makers and Acceptors thereof; are to be set forth under the Names of the holders; if the bankrupt be liable as Drawer, Maker, Acceptor or Endorser thereof, it is to be stated accordingly. If the names of the Holders are not known, the Name of the last Holder known to the Debtor should be stated with his residence. The same particulars as to other commercial paper.)

	Amount.	
	Dollars.	Cents.
.....	None.	
Total	None.	

Insert in all cases, ledger page, names of holders, residence, if known, if unknown, so state; names of and residence of persons accommodated; place where contracted; whether liability was contracted as partner or joint contractor, or with any other person, and if so, with whom. The Pusey and Jones Company, Petitioner, by Hartwell Cabell.

This Schedule must be executed in triplicate.

591 1007.—In Bankruptcy.—Oath to Schedule. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

N. B.—The following form of Oath to Schedule — of the Petition by Debtor is prescribed and is to be annexed to the same.

Oath to Schedule.

UNITED STATES OF AMERICA,

District of Connecticut, County of Fairfield, ss:

On this twenty-third day of July, A. D. 1921, before me personally came Hartwell Cabell, one of the directors of the Pusey and Jones Company, the person mentioned in and subscribed to the foregoing Schedule, and who, being by me first duly sworn, did declare the said Schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy.

Subscribed and sworn to before me this twenty-third day of July, A. D. 1921. [Seal.] Robert B. Morse, Notary Public. (Official Character.)

This oath may be administered by officers authorized to administer oaths in proceedings before Courts of the United States or under the laws of the State where the same are to be taken; and diplomatic or consular officers of the United States in any foreign country.

Petitioner's attorney cannot act as notary.

592 1008.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE B (1), No. —.

Statement of all Property of Bankrupt.

Real Estate.

	Estimated value.	
	Dollars.	Cents
The Pusey and Jones Company owns considerable real estate at Wilmington, Delaware, and at Gloucester, New Jersey, the exact value of which cannot be stated. The Pusey and Jones Company spent \$8,000,000 in erecting plants at Gloucester, New Jersey, during the recent war and the plant at Wilmington, Delaware, has always been considered of great value		Unknown.
Total		Unknown.

Insert in all cases, location and description of all real estate owned by debtor or held by him; incumbrances thereon, if any, and dates thereof; statement of particulars relating thereto. The Pusey and Jones Company, Petitioner, by Hartwell Cabell.

This Schedule must be executed in triplicate.

593 1009.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE B (2), No. —.

Personal Property.

	Amount.	
	Dollars.	Cents.
A. Cash in Hand.....	None, except what is in the hands of the Receivers in Delaware.....	None.
B. Bills of exchange. Promissory notes or securities of any description (each to be set out separately.)	"	"
C. Stock in trade in — business of —, at —, of the value of —,	"	"
D. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz.:	"	"
E. Books, prints and pictures, viz.:	"	"
F. Horses, cows, sheep and other animals, with number of each, viz.:	"	"
G. Carriages and other vehicles, viz.:	"	"
H. Farming stock and implements of husbandry, viz.:	"	"
I. Shipping and shares in vessels, viz.:	"	"
K. Machinery fixtures, apparatus and tools used in business, with the place where each is situated, viz.:	"	"
L. Patents, copyright and trade marks, viz.:	"	"
M. Goods or personal property of any other description with the place where each is situated, viz.:	"	"
Total	None.	

The Pusey and Jones Company, Petitioner, by Hartwell Cabell.
This Schedule must be executed in triplicate.

- 594 1010.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE B. (3).

Choses in Action.

	Amount.	
	Dollars.	Cents.
A. Debts due Petitioner None, except what is in the hands of on open account..... the Receivers appointed in Delaware.	None.	
Total	None.	

The Pusey and Jones Company, Petitioner, By Hartwell Cabell.
This Schedule must be executed in triplicate.

- 595 1011.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE B. (3) Continued.

Choses in Action.

	Description and amount.	Dollars.	Cents.
B. Stock in incorporated Companies, Interest in Joint Stock Companies, and negotiable Bonds.	None, except what is in the hands of the Receivers appointed in Delaware.	None.	
C. Policies of Insurance.	" " " "	"	"
D. Unliquidated Claims of every nature, with their estimated value.	" " " "	"	"
E. Deposits of money in banking institution and elsewhere.	" " " "	"	"
Total		None.	

The Pusey and Jones Company, Petitioner, by Hartwell Cabell.
This Schedule must be executed in triplicate.

- 596 1012.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE B (4), No. —.

Property in Reversion, Remainder, or Expectancy, Including Property Held in Trust for the Debtor or Subject to Any Power or Right to Dispose of or to Charge.

N. B.—A particular description of each interest must be entered. If all or any of the Debtor's Property has been conveyed by Deed or

Assignment, or otherwise, for the benefit of Creditors, the date of such Deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the Debtor.

General interest.	Particular description.	Supposed value of my interest.	
		Dollars.	Cents.
Interest in land.....	None, except what is in the hands of the Receivers appointed in Delaware.	None.	
Personal property.	"	"	"
Property in money, stocks, shares, bonds, annuities, etc.	"	"	"
Rights and Powers, Leg- acies and bequests.	"	"	"
Total			
Property heretofore con- veyed for benefit of creditors.	None.	Amount realized from proceeds of property conveyed.	
What portion has been conveyed by Deed or Assignment, or other- wise for benefit of Creditors; date of such Deed, name and address of party to whom conveyed, amount realized there- from, and disposal of same, so far as known to the Debtor.		Dollars. Cents.	
		None.	
What sum or sums have been paid to Counsel, and to whom, for service rendered or to be rendered in this Bankruptcy.	None.	None.	
Total		None.	

The Pusey and Jones Company, Petitioner, by Hartwell Cabell.
This Schedule must be executed in triplicate.

- 597 1013.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE B (5), No. —.

A Particular Statement of the Property Claimed as Exempted from the Operation of the Acts of Congress Relating to Bankruptcy, Giving Each Item of Property and its Valuation, and if Any Portion of it is Real Estate, its Location, Description, and Present Use.

		Valuation.	
		Dollars.	Cents
Military Uniforms, arms and Equipments.	None.....		None.
Property claimed to be exempted by State laws; its valuation; whether real or personal; its descriptions, and present use; and reference given to the Statute of the State creating the exemption.	None.....		None.
Total			None.

The Pusey and Jones Company, Petitioner. By Hartwell Cabell.
This Schedule must be executed in triplicate.

- 598 1014.—Schedule in Bankruptcy. Julius Blumberg, Printer, Law Blank Publisher, and Mfg. Stationer, 262 Grand Street, New York.

SCHEDULE B (6), No. —.

Books, Papers, Deeds and Writings Relating to Bankrupt's Business and Estate.

The Following is a True List of all Books, Papers, Deeds and Writings relating to my Trade, Business, Dealings, Estate and Effects, or any part thereof, which at the date of this Petition, are in my possession or under my custody and control, or which are in the Possession or Custody of any Person in Trust for me, or for my Use, Benefit, or Advantage; and also of all others, which may have been heretofore, at any time in my Possession, or under my custody or Control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same:

Books.....	Some of the books, deeds and papers are at Gloucester, New Jersey, but mostly all of the books and papers of the Company are with the Receivers appointed in Delaware.		
Deeds.....	"	"	"
Papers, etc..	"	"	"

The Pusey and Jones Company, Petitioner, by Hartwell Cabell.
This Schedule must be executed in triplicate.

599 1016.—Bankruptcy, Summary of Debts and Assets. Julius Blumberg, Printer, Law Blank Publisher, and Stationer, 262 Grand Street, New York.

Summary of Debts and Assets from the Statements of the Bankrupt in Schedules A and B.

Schedule A.	1. (1) Taxes and Debts due United States.....	None.
"	" 1. (2) Taxes due States, Counties, Districts and Municipalities	Unknown.
	1. (3) Wages	800
"	" 1. (4) Other Debts preferred by Law.....	None.
"	" 2. Secured Claims.....	950,000
"	" 3. Unsecured Claims.....	\$49,943 10
"	" 4. Notes and Bills which ought to be paid by other parties thereto.....	Unknown.
"	" 5. Accommodation Paper.....	None.
Schedule A, total.....		1,790,943 10

Schedule B.	1. Real Estate.....	Unknown.
"	" 2-a. Cash on hand.....	None.
"	" 2-b. Bills, Promissory notes and securities.....	"
"	" 2-c. Stock in Trade.....	"
"	" 2-d. Household Goods, &c.....	"
"	" 2-e. Books, Prints and Pictures.....	"
"	" 2-f. Horses, Cows and other animals.....	"
"	" 2-g. Carriages and other Vehicles.....	"
"	" 2-h. Farming Stock and Implements.....	"
"	" 2-i. Shipping and Shares in Vessels.....	"
"	" 2-k. Machinery, Tools, &c.....	"
"	" 2-l. Patents, Copyrights and Trade-marks.....	"
"	" 2-m. Other Personal Property.....	"
"	" 3-a. Debts due on Open Accounts.....	"
"	" 3-b. Stocks, Negotiable Bonds, &c.....	"
"	" 3-c. Policies of Insurance.....	"
"	" 3-d. Unliquidated Claims.....	"
"	" 3-e. Deposits of Money in banks and elsewhere....	"
"	" 4. Property in Reversion, Remainder, Trust &c.	"
"	" 5. Property claimed to be exempt.....	None.
"	" 6. Books, Deeds and Papers.....	Unknown.
Schedule B, total.....		Unknown.

The Pusey and Jones Company, Petitioner, by Hartwell Cabell.
This Schedule must be executed in triplicate.

600 N. B.—The following form of Oath to Schedule B of the Petition by Debtor is prescribed and is to be annexed to the same.

Oath to Schedule B.

UNITED STATES OF AMERICA,

District of Connecticut, County of Fairchild, ss:

On this twenty-third day of July, A. D. 1921, before me personally came Hartwell Cabell, one of the directors of The Pusey and Jones Company, the person mentioned in and subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of Congress relating to bankruptcy.

Subscribed and sworn to before me this twenty-third day of July, A. D. 1921. [Seal.] Robert B. Morse, Notary Public. (Official

This oath may be administered by officers authorized to administer oaths in proceedings before Courts of the United States or under the laws of the State where the same are to be taken; and diplomatic or consular officers of the United States in any foreign country.

Petitioner's attorney cannot act as notary.

601 UNITED STATES OF AMERICA,

Southern District of New York, ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the writings annexed to this certificate, viz.: the petition and schedules in the cause entitled In the Matter of The Pusey and Jones Company, Bankrupt, 30,038, Filed July 25, 1921, 9 A. M., have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In Testimony Whereof I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this twenty-seventh day of July, in the year of our Lord one thousand nine hundred and twenty-one, and of the independence of the said United States the one hundred and forty-sixth. (Sgd.) Alex. Gilchrist, Jr., Clerk. [Seal.]

EXHIBIT "B."

In the District Court of the United States for the Southern District of New York.

No. 30038. In Bankruptcy.

In the Matter of THE PUSEY AND JONES COMPANY, Bankrupt.

At New York City, in said District, on the 25th day of July, A. D. 1921, before the Honorable Martin T. Manton, Circuit Judge,

602 holding the said Court in Bankruptcy, the petition of Th Pusey and Jones Company that it be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, th said Pusey and Jones Company is hereby declared and adjudged bankrupt accordingly.

And it is further ordered that the said matter be referred to Hon Seaman Miller, one of the referees in bankruptcy of this Court, to take all such further proceedings therein as are required by said Acts of Congress, and all such acts therein as the Court might take or perform, except such as by law or the general orders of the Supreme Court are required to be performed by the Judge; and that the said bankrupt shall attend before said referee on the 27th day of July, 1921, at 10 o'clock A. M., and thenceforth shall submit to such orders as may be made by said referee or by the Court relating to its said bankruptcy.

Witness the Honorable Martin T. Manton, Circuit Judge holding the said Court, and the seal thereof, at the City of New York, in said District, on the 23rd day of July, A. D. 1921. Manton, U. S. Judge. [Seal.]

Alex. Gilchrist, Jr., Clerk.

(Endorsed: U. S. District Court, S. D. of N. Y. Filed July 25, 1921, 9 A. M.) A true copy. (Sgd.) Alex. Gilchrist, Jr., Clerk. [Seal.]

603 **DECREE CONFIRMING APPOINTMENT OF
RECEIVERS.**

[Filed August 1, 1921.]

And Now, to wit, this first day of August, A. D. 1921, this cause having come on before the Court for a further hearing upon the rule issued at the time of the filing of the bill of complaint in the above cause, requiring The Pusey and Jones Company, respondent herein, to show cause why Willard Saulsbury and Charles B. Evans, then appointed Receivers of this Court of and for The Pusey and Jones Company, until the further order of this Court, should not be continued during the pendency of this cause; after hearing John P. Nields, Esq., on behalf of complainant, and Henry A. Wise, Esq., Hartwell Cabell, Esq., and Seldon Bacon, Esq., on behalf of the respondent, and the Court having filed its opinion herein, July 21, 1921, and it appearing to the Court from the bill of complaint, answer and affidavits filed therein, that the said Receivers should be continued during the pendency of this cause, upon due consideration thereof:

It is ordered, adjudged and decreed by the court that the decree made and entered in this cause on the ninth day of June, A. D. 1921, as interpreted by the order of this Court of July 30, A. D. 1921, upon the petition of said receivers praying for instructions, be

and hereby is in all things confirmed; and further, that the same be and remain stable until the further order of this Court. (Sgd.) Hugh M. Morris, J.

604

PETITION FOR APPEAL.

[Filed August 22, 1921.]

To the Honorable the Judges of the United States Court for the District of Delaware:

The above named, The Pusey and Jones Company, a corporation of the State of Delaware, defendant in the above case, conceiving it is aggrieved by the decree made and entered on the first day of August, 1921, in the above entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Third Circuit, for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit. (Sgd.) Robert Penington, (Sgd.) George N. Davis, Solicitors for Defendant.

August 16, 1921.

ORDER ALLOWING APPEAL.

[Filed August 22, 1921.]

And now, to wit, this twenty-second day of August, A. D. 1921, upon consideration of the foregoing petition, it is, upon motion of George N. Davis, Esq., solicitor for The Pusey and Jones Company, petitioner, ordered by the Court that the appeal prayed for therein be, and the same is hereby allowed, and the amount of the appeal bond to be entered by the petitioner is hereby fixed at the sum of five hundred dollars. (Sgd.) Hugh M. Morris, J.

605

ASSIGNMENT OF ERRORS.

[Filed August 22, 1921.]

And now comes the said, The Pusey and Jones Company defendant above, by Robert Penington and George N. Davis, its solicitors, and says that in the record, proceedings and order in the above cause, there is manifest error in this, to wit:

1. That the learned Court erred in entering the order of June 9, 1921, appointing Willard Saulsbury and Charles B. Evans, of Wilmington, Delaware, Receivers of The Pusey and Jones Company, defendant herein, as set forth in the terms of said order.

2. And the said Court erred in entering the first paragraph of said order as follows.

"First. That Willard Saulsbury and Charles B. Evans, of Wilmington, Delaware, be and they are hereby appointed receivers of this court of and for the said The Pusey and Jones Company, the respondent, to take charge of the estate, effects, business and affairs thereof, with power to prosecute and defend in the name of said corporation, or otherwise, all claims or suits, to appoint an agent or agents under them, and, subject to the approval of this Court, to do all other acts which might be done by the said corporation and may be necessary and proper, and in so far as it may be necessary in their judgment, to continue the business of the respondent corporation, for the purpose of conserving the receivership estate, until the further order of this court."

3. The said Court erred in entering the second paragraph of said order as follows:

"Second. That the said receivers be and they are hereby authorized and empowered to take such action or proceedings with respect to the judgment entered by this Court against The Pusey and Jones Company and in favor of the Baltimore Dry Docks and Shipbuilding Company in a suit instituted in this court, being No. 6 to the September Term, A. D. 1920, and recited in the bill of complaint filed herein, as they may deem proper or as they may be advised."

4. The said Court erred in entering the third paragraph of said order as follows:

"Third. That the said defendant corporation, its officers, agents and employees and any person, firm or corporation claiming by, through or under it, forthwith deliver over to the said Receivers the property and effects of said corporation and all books and papers touching the same."

5. The said Court erred in entering the fourth paragraph of said order as follows:

"Fourth. That the said The Pusey and Jones Company, respondent, its officers, agents, attorneys, servants and employees and any person, firm or corporation, claiming by, through or under it, be and hereby are enjoined and restrained from in any manner selling, leasing, assigning, secreting, encumbering, transferring, or otherwise disposing of the moneys, property and assets of the said respondent corporation, or in any manner destroying, secreting or otherwise disposing of any of its books, papers, documents or securities, except to the Receivers appointed herein, until the further order of this court."

6. The said Court in entering the fifth paragraph of said order as follows:

"Fifth. That the said Receivers be and hereby are directed to open proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of their trust; to take and preserve vouchers for all payments made; to deposit all moneys coming into their hands in some national bank or trust company within the District of Delaware, and to report to this Court the name of the depository selected for that purpose; and to file in this court, within three months from the date of their quali-

fication, an inventory of all property of every description which shall have come into their possession, together with an account of their receipts and expenditures as such Receivers, including a list of debts and credits which may be due from and to the estate in their charge, and thereafter to make and file quarterly accounts of receipts and disbursements during their continuance in office, or as this Court may by further order direct."

7. The said Court erred in entering the sixth paragraph of said order as follows:

"Sixth. That the said receivers within five days from the date hereof and before entering upon their duties as such enter and file in this court a joint and several bond in the sum of fifty thousand dollars (\$50,000), with surety to be approved by the Court, conditioned that the said Receivers shall well and truly perform the duties of their office and truly account for all moneys and property that may come into their hands as such Receivers, and National Surety Company is hereby approved as surety in said bond."

8. The said Court erred in entering the seventh paragraph of said order as follows:

"Seventh. That within five days from the date hereof the said complainant file in this court a bond with surety to be approved by the Court, in the sum of ten thousand dollars, conditioned for the payment of such costs, fees and expenses of the Receivers herein as may be hereafter ascertained and determined by the Court to be properly payable by the complainant in this cause, and United States Fidelity and Guaranty Company is hereby approved as surety in said bond."

608 9. The said Court erred in entering the eighth paragraph of said order as follows:

"Eighth. It is further ordered by the Court that the said The Pusey and Jones Company show cause before this court at the United States Court Room in the City of Wilmington, in said District, on Saturday, the eighteenth day of June, A. D. 1921, at ten o'clock in the forenoon, or as soon as thereafter as counsel can be heard, why the said Receivers should not be continued during the pendency of this cause; and further, that the complainant file in this court on or before June 14, 1921, at twelve o'clock noon, any affidavits and exhibits in support of the continuance of said Receivers; and further, that the respondent, after being served with a copy of this order, have leave to file in this court on or before the seventeenth day of June, A. D., 1921, affidavits and exhibits in reply to any affidavits and exhibits by the said respondent."

10. The said Court erred in dismissing the motion to vacate the appointment of the said Receivers filed by The Pusey and Jones Company, the defendant herein, on the tenth day of June, 1921.

11. The learned Court erred in entering on the first day of August, A. D. 1921, the following order:

"It is ordered, adjudged and decreed by the Court that the decree made and entered in this cause on the ninth day of June, A. D. 1921, as interpreted by the order of this Court of July 30, A. D. 1921, upon the petition of said receivers praying for instructions, be and hereby

is in all things confirmed; and further, that the same be and remain stable until the further order of this court."

12. The learned Court erred in not finding in its opinion filed in support of said order as a fact that the payment of the
609 notes under which the complainant claimed to be a creditor of the defendant company, was deferred by agreement of all parties in interest until the final settlement to be made between the defendant, The Pusey and Jones Company, and the United States Shipping Board Emergency Fleet Corporation.

13. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"As to the first contention (referring to the destruction of the negotiability of the notes), it is unnecessary to decide whether an agreement for an indefinite extension of time for payment embodied in a note or entered into between the parties thereto destroys its negotiability, for the agreement here under consideration touching that matter was one made, not with the maker of the notes, but with a third person. Such an agreement did not and could not affect the notes, their tenor or any quality thereof." (Parenthesis ours.)

14. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"The second contention (that the indebtedness of Hannevig to the defendant was a set off and a complete defense to the alleged holder of the notes), overlooks the doctrine that overdue paper is negotiable and that an endorsee takes the paper subject only to such equities as attach to the notes themselves and that in his hands it is not subject to claims against the payee or an intermediate endorser arising out of collateral matters or independent transactions." (Parenthesis ours.)

15. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"The third contention (that the complainant is merely a representative of the real parties in interest in the notes), ignores
610 the negotiable character of the notes and that an endorsement of a note to an agent transfers to him title thereto as against all parties except his principal." (Parenthesis ours.)

16. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"The notes are unpaid and no equities have been set up by the defendant that would serve to defeat in whole or in part the claim of the complainant based thereon."

17. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"It appearing that the complainant is a creditor who may maintain this suit in this court it is unnecessary now to determine whether he is also a stockholder as alleged."

18. The learned Court erred in not finding in its opinion filed in support of the order of August 1, 1921, that the complainant in the above cause was not a stockholder of The Pusey and Jones Company within the meaning of paragraph 3883 of the Revised Code of the State of Delaware.

19. The learned Court erred in finding in its opinion filed in support of said order that the complainant was a creditor of The Pusey and Jones Company, defendant.

20. The learned Court erred in not finding in its opinion filed in support of said order that it was necessary for the complainant to be a judgment creditor of The Pusey and Jones Company, defendant, in order to maintain a bill in equity for a Receiver.

21. The learned Court erred in finding in its opinion filed in support of the said order as follows:

611 "Little need be said with respect to the insolvency of the defendant in that it is unable to meet its obligations as they fall due in the usual course of business. It has not for years been able to meet its maturing obligations."

22. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"For a long time the defendant has been financially dependent upon the Fleet Corporation."

23. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"The accounts between the defendant and that corporation have not been adjusted and are in litigation. There is apparently no substantial reason to expect that further moneys will be immediately forthcoming from that source."

24. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"In August, 1920, defendant's financial condition, as stated by it in its bill of complaint filed in the Supreme Court of the District of Columbia against the United States Shipping Board Emergency Fleet Corporation, had resulted in an inability 'to obtain and give acceptable security for the completion and delivery of vessels which otherwise it would be able to contract to construct in one or other of its shipyards'; inability 'to obtain contracts for present or future ship-construction work'; and 'ever-increasing impairment of credit from which plaintiff has suffered for more than six (6) months last past and will continue to suffer until same is completely ruined or irretrievably lost'; and in a rapidly diminishing executive staff and labor force which 'soon, unless remedied, will be non-existent.' I find nothing in the record to overbalance those statements of the defendant. Apparently, as then foretold, its condition has gradually become worse."

612 25. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"It appears that the plaintiff (Baltimore Dry Docks and Shipbuilding Company), therein entered into an agreement that it would not require payment thereof (its judgment for \$800,125 against the defendant company), until November, 1921, but the terms and conditions of that agreement were extraordinary and were not those which obtain in the ordinary and usual course of trade and business." (Parenthesis ours.)

26. The learned Court erred in finding in its opinion filed in support of the said order that the complainant will probably be

able to establish at the final hearing that he is a creditor of the respondent company, and that that company is insolvent in that it is unable to pay its obligations as they mature in the ordinary course of trade and business.

27. The learned Court erred in not finding that The Pusey and Jones Company was able to meet its obligations as they fall due in the ordinary course of business.

28. The learned Court erred in not finding that the defendant, The Pusey and Jones Company, was not insolvent within the meaning of paragraph 3883 of the Revised Code of the State of Delaware.

29. The learned Court erred in not finding that the complainant had no right to maintain his bill, he being neither a creditor nor a stockholder of the defendant within the meaning of paragraph 3883 of the Revised Code of Delaware, nor having standing otherwise to appear as complainant in a bill applying for a Receiver.

30. The learned Court erred in finding in its opinion filed in support of the said order as follows:

613 "It further appears that the agreement (between the United

States Shipping Board Emergency Fleet Corporation and the defendant of May 11, 1918), so entered into by the company has been carried out, and that at the time of the appointment of the Receivers the Fleet Corporation, through its representative acting as treasurer, had complete control of all the corporate funds of the defendant and of their disbursement." (Parenthesis ours.)

31. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"It further appears that on March 18, 1921, an agreement was entered into (a copy of which is annexed hereto) by which the affairs of the defendant corporation were to be managed and controlled, the purpose of that agreement being, as I understand it, not for the preservation of the assets of the defendant company for the benefit of all its creditors and stockholders, but primarily for the benefit of the parties to that agreement."

32. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"True that agreement (of March 18, 1921), was approved by a Judge of the District Court of the United States for the Southern District of New York; but that approval merely authorized its receivers in bankruptcy of a stockholder of The Pusey and Jones Company to become a party thereto. Such approval had no other effect or purpose. That approval had no relevancy to the questions here involved." (Parenthesis ours.)

33. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"These two agreements (May 11, 1918, with the United States Shipping Board, and March 18, 1921, approved by the District Court of the Southern District of New York), amount to a practical nullification of the Delaware statute requiring that a Delaware corporation shall be managed by a board of directors, the purpose of that statute being that the corporation shall be so

managed for the benefit of all parties in interest and not merely for some of such parties." (Parenthesis ours.)

34. The learned Court erred in finding in its opinion filed in support of the said order as follows:

"In view of the financial condition of the company and the foregoing facts I deem the continuance of the Receivers during the pendency of this cause essential for the protection of the interests of the complainant and others in like position."

35. Because the learned Court erred in not finding that there was no evidence whatever to support the allegations of the bill in equity filed to the effect that the judgment entered on March 22, 1921, by the Baltimore Dry Docks and Shipbuilding Company against the defendant, was collusively and fraudulently entered in derogation of the rights of the complainant in the bill.

36. Because the learned Court erred in not dismissing the complainant's bill because of multifariousness, the complainant asking for a receivership in said bill on behalf of all stockholders of the defendant under a claim of an alleged common right; and at the same time asking individual relief in the way of a compulsory transfer of the stock to himself on the corporate books.

37. Because the United States District Court for the District of Delaware has no jurisdiction of any proceeding taken under
615 paragraph 3883 of the Delaware Code; such a proceeding is not a suit in equity, but a proceeding addressed to the supervisory or visitorial powers of the State, exercised by its Chancellor.

38. Because the learned Court should have dismissed the complainant's bill by reason of the denial of complainant's allegations that he was a stockholder and a creditor of the defendant company, since this Court cannot combine in one proceeding a law action to establish the facts of complainant's legal standing, and a proceeding in equity to appoint a Receiver.

39. That the learned Court erred in entering the following order:

"And now, to wit, this twenty-ninth day of July, A. D. 1921, the motion of the complainant filed on the twentieth day of June, A. D. 1921, for leave to amend the bill of complaint filed in the above cause, having been duly considered, and the said complainant having, by leave of the Court, abandoned his said motion to amend in the particulars set forth under paragraph 2 of said motion, it is ordered by the Court that leave be and hereby is granted to amend the bill of complaint in this cause by adding at the end of paragraph numbered '7' the following:

"And complainant avers that at the time of filing the bill of complaint in this cause and at all the times prior thereto when any of the transactions occurred that are alleged in said bill the said Christoffer Hannevig, Inc., was and is a corporation organized under and by virtue of the laws of the State of New York and a citizen and resident of said State, and the said Christoffer Hannevig was and is an alien, and a subject of the King of Norway and now residing therein, and the said Christoffer Hannevig, Inc., and Christoffer Hannevig were competent as such citizen and alien respectively

616 to maintain suit in this court against the said respondent for the enforcement of said indebtedness represented by said promissory notes, if no assignment or transfer had been made."

"And it is further ordered by the Court that the said defendant file its answer to said amendment on or before the eleventh day of August, A. D. 1921."

40. That the Court erred in entering the following order:

"And now, to wit, this thirtieth day of July, A. D. 1921, upon reading and considering the annexed petition of Willard Saulsbury and Charles B. Evans, Receivers of said court of and for The Pusey and Jones Company, after hearing counsel for the Receivers and for the respondent company, it is ordered by the Court that the said Receivers in executing the duties conferred upon them by the decree of this Court of June 9, 1921, be and hereby are authorized to collect the outstanding debts, claims and property due and belonging to the said The Pusey and Jones Company, to enter into contracts and continue the business of said company in accordance with the customs and exigencies pertaining to business of like kind, and in general to operate the business of said company and in the manner best calculated, in the opinion of said Receivers, to fully protect the trade and good-will of said company, to the end that the business of the said company may be preserved, as well as its assets, as a going concern." (Sgd.) Robert Penington, (Sgd.) George N. Davis, Solicitors for The Pusey and Jones Company, Defendant.

617

CITATION.

[Filed September 1, 1921.]

UNITED STATES OF AMERICA, *ss.*:

The President of the United States to Hans Karluf Hanssen, a subject of the King of Norway, a citizen of the Kingdom of Norway, and a resident of Haugesund, Norway, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Third Circuit, in the City of Philadelphia, State of Pennsylvania, on the tenth day of September, A. D. 1921, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Delaware, wherein The Pusey and Jones Company is appellant, and you are appellee, and show cause, if any there be, why said decree against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Hugh M. Morris, Judge of the District Court of the United States for the District of Delaware, at Wilmington, in said District, this thirty-first day of August, A. D. 1921. (Sgd.) Hugh M. Morris, United States District Judge, District of Delaware.

618 **PRAECIPE FOR TRANSCRIPT OF RECORD.**

[Filed August 30, 1921.]

Please prepare and certify a transcript of record in the above entitled case for filing in the United States Circuit Court of Appeals for the Third Circuit, including therein the following, viz:

1. Docket entries.
2. Bill of complaint as amended.
3. Motion for appointment of receivers.
4. Order appointing receivers.
5. Motion of defendant for order vacating order appointing receivers.
6. Affidavit of Wm. G. Cox.
7. Affidavit of Lawrence Leonard.
8. Order denying motion of defendant.
9. Affidavit of John J. Mason.
10. Affidavit of F. W. G. Unger Vetlesen.
- 10a. Stipulation.
11. Answer of defendant.
12. Affidavit of Charles Stewart Lee.
13. Affidavit of Robert Penington.
14. Affidavit of George N. Davis.
15. Affidavit of Charles Kimmich.
16. Affidavit of Chester N. Farr, Jr.
17. Affidavit of Frederic D. McKenney.
18. Affidavit of Hartwell Cabell.
19. Affidavit of William G. Cox.
20. Affidavit of William G. Cox.
21. Affidavit of Clarence B. Lynch.
22. Second Affidavit of Clarence B. Lynch.
23. Third affidavit of Clarence B. Lynch.
24. Affidavit of Holden A. Evans.
25. Affidavit of George Weems Williams.
26. Affidavit of William A. Glasgow, Jr.
27. Affidavit of R. J. Cannon.
- 619 28. Affidavit of Lawrence Leonard.
29. Affidavits of Henry A. Wise, James Bayard Simpson and Carl Eriksen.
30. Affidavit of John J. Mason.
31. Affidavit of F. W. G. Unger Vetlesen.
32. Affidavit of Hans Karluf Hanssen.
33. Power of attorney to Hans Karluf Hanssen.
34. Motion for leave to amend bill.
35. Petition of Jacob Prebensen, Jr., et al.
36. Petition of receivers to pay certain bills.
37. Objection to petition of intervention of Jacob Prebensen, Jr., et al.
38. Opinion of the Court

39. Petition of Receivers and Order of Court, re Involuntary Petition in Bankruptcy in New York.
40. Order granting leave to amend bill of complaint.
41. Petition of receivers for instructions.
42. Order of Court instructing Receivers.
43. Petition of Receivers and order of Court, re voluntary petition in bankruptcy in New York.
44. Decree confirming appointment of Receivers.
45. Petition for appeal and order allowing appeal.
46. Assignments of error.
47. Citation.
48. Praecipe for transcript of record. (Sgd.) Robert Penington, (Sgd.) George N. Davis, Solicitors for Defendant-Appellant.

To H. C. Mahaffy, Jr., Clerk U. S. District Court.

Service of a copy of the foregoing praecipe accepted this thirtieth day of August, A. D. 1921. (Sgd.) John P. Nields, Solicitor for Complainant-Appellee.

620

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
District of Delaware, ss:

I, Henry C. Mahaffy, Jr., Clerk of the District Court of the United States for the District of Delaware, do hereby certify that I have carefully compared the writings annexed to this certificate and they are true copies of their respective originals and correct transcripts therefrom, so full and complete as the same now remain on file and of record in my office, being a complete exemplification of the record and proceedings in the case of Hans Karluf Hanssen, complainant, v. The Pacey and Jones Company, respondent, No. 429 in Equity, pending in said court made up as provided in the praecipe of the solicitors for the respondent-appellant, filed in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Wilmington, in said District, this thirtieth day of September, A. D. 1921. [Seal.] (Sgd.) H. C. Mahaffy, Jr., Clerk U. S. District Court, District of Delaware.

621 In the United States Circuit Court of Appeals for the Third Circuit.

[Title omitted.]

The United States Shipping Board Emergency Fleet Corporation, a body corporate, having presented its petition to this Court and

It appearing from said petition that on the 8th day of October, 1921, said United States Shipping Board Emergency Fleet Corporation filed its petition in the United States District Court for the District of Delaware alleging that it is a creditor of the Respondent-

Appellant and praying for leave to intervene as a party complainant in this cause and that on said eighth day of October said United States District Court for the District of Delaware made an order a transcript of which is attached to the said petition presented to this Court.

It is on this 5th day of December, 1921, on motion of George W. Coles, United States Attorney for the Eastern District of Pennsylvania, the Respondent-Appellant, the Pusey and Jones Company, appearing through its counsel, William A. Glasgow, Jr., and objecting to the prayer of said petition on the ground that it claimed to have received no notice of the filing of the original petition on the eighth day of October, 1921, in the court below or the order entered thereon,

622 Ordered that said petition presented to this Court as aforesaid and the transcript of the said petition filed in the United States District Court for the District of Delaware and of the order of said last mentioned Court granting the prayer of said petition be filed in the Court as a part of the transcript of the record on appeal in this cause. Per Curiam.

[Endorsement Omitted.]

623

MOTION TO INTERVENE.

[Filed Dec. 5, 1921.]

[Title omitted.]

Now, to wit, on this fifth day of December, A. D. 1921, comes United States Shipping Board Emergency Fleet Corporation, by George W. Coles, United States District Attorney for the Eastern District of Pennsylvania, its solicitor, and moves the court for an order to permit the said United States Shipping Board Emergency Fleet Corporation to file the annexed petition and amend the transcript of the record in the above cause in this court by adding thereto a transcript of a petition filed in the United States District Court for the District of Delaware on October 8th, 1921, by said United States Shipping Board Emergency Fleet Corporation, praying for leave to intervene as a party defendant in this cause in said

624 last mentioned court, and of the order made by said last mentioned Court on said day granting the prayer of said petition and giving leave to the said United States Shipping Board Emergency Fleet Corporation to become a party complainant in said cause. George W. Coles, U. S. District Attorney for the Eastern District of Pennsylvania, Solicitor for United States Shipping Board Emergency Fleet Corporation.

Lindabury, Depue & Faulks, Of Counsel.

PETITION OF INTERVENER.

[Title omitted.]

To the Honorable Judges of the United States Circuit Court of Appeals for the Third Circuit:

The petition of the United States Shipping Board Emergency Fleet Corporation, a corporation organized and existing under and by virtue of the laws of the District of Columbia, respectfully shows:

1. That your petitioner was formed by the United States Shipping Board under authority conferred upon said Board by the Act of Congress entitled: "An Act to establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary, a naval reserve, and a merchant marine to meet the requirements of the commerce of the United States, with its territories and divisions, and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States, and for other purposes," approved September 7, 1916 (39 Stat. 728, Ch. 431), sometimes cited as "Shipping Act, 1916,"

for the purpose of the construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. Your petitioner is a creditor of the Pusey & Jones Company, the above-named respondent-appellant, in a large sum of money in excess of \$5,600,000, for moneys loaned and advanced by petitioner to the said respondent-appellant at its request; that \$5,000,000 of said indebtedness, with interest at the rate of 5% per annum from October 1, 1919, is secured by a mortgage made by said respondent-appellant to your petitioner, bearing date the third day of August, 1918. The bill of complaint in this cause was filed by the complainant, Hans Karluf Hanssen, on behalf of himself and of all other stockholders and creditors of the said respondent-appellant who may contribute to the expense hereof and become parties to this cause.

2. On the 8th day of October, 1921, your petitioner presented its petition for leave to intervene as a party complainant in said cause to the Honorable Hugh M. Morris, Judge of the District Court of the United States for the District of Delaware. Said petition, a copy of which is hereto annexed and marked Schedule A, contains a statement of the indebtedness of the said respondent-appellant to your petitioner, and prays that your petitioner may be joined as a party complainant in said bill of complaint.

3. On said 8th day of October, 1921, the said United States District Court for the District of Delaware made an order directing that said petition be filed, and that your petitioner have leave to become a party complainant to the said cause, a copy of which said order is hereto annexed and marked Schedule B.

4. That prior to the said 8th day of October, 1921, the transcript of the record of said cause was duly filed with the Clerk of this Court;

that said transcript does not contain the petition filed by
627 your petitioner for leave to intervene as a party complainant
to said cause, nor a copy of the order granting the prayer of
said petition.

5. That your petitioner, as a party complainant to said cause, has
an interest in the subject of the bill of complaint and in the subject
matter of the pending appeal in this court:

Wherefore your petitioner prays that an order may be made by
this Honorable Court permitting your petitioner to amend the trans-
cript of the record in this court by adding thereto a transcript of the
above mentioned petition for leave to intervene, filed by your peti-
tioner on the 8th day of October, 1921, as aforesaid, and a trans-
cript of the order made by the said United States District Court for
the District of Delaware granting the prayer of the said petition,
and that your petitioner may be admitted as a party complainant
appellee in this cause.

And your petitioner will ever pray, etc. United States Shipping
Board Emergency Fleet Corporation, By George W. Coles, United
States Attorney Eastern District of Pennsylvania. Lindabury, De-
pue & Faulks, Of Counsel.

STATE OF NEW JERSEY,

County of Essex, ss:

Josiah Stryker, being duly sworn according to law, on his oath
says: That he is a member of the firm of Lindabury, Depue
628 & Faulks, attorneys-and-counsellors-at-law of the State of New
Jersey; that the said firm has been retained by the United
States Shipping Board Emergency Fleet Corporation, as counsel
in all matters relating to the transactions between said United States
Shipping Board Emergency Fleet Corporation and the Pusey &
Jones Company, and is duly authorized by the said United States
Shipping Board Emergency Fleet Corporation to file and verify the
foregoing petition in its behalf.

Deponent further says that he has read the foregoing petition, and
he is informed and believes that the statements contained therein
are true. Deponent is making this affidavit because no officer of the
United States Shipping Board Emergency Fleet Corporation is now
within the District of New Jersey. Josiah Stryker.

Subscribed and sworn to before me this 29th day of November,
1921. [Seal.] H. Richard Woebse, Notary Public of New Jersey.

629 **SCHEDULE A—PETITION FOR LEAVE TO
INTERVENE.**

In the District Court of the United States for the District of Delaware.

No. 429. In Equity.

HANS KARLUF HANSEN

v.

THE PUSEY AND JONES COMPANY.

The petition of United States Shipping Board Emergency Fleet Corporation, a corporation organized and existing under and by virtue of the laws of the District of Columbia, respectfully shows:

1. That your petitioner was formed by the United States Shipping Board under authority conferred upon said Board by the act of Congress entitled, "An Act to establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States, and for other purposes", approved September 7, 1916 (39 Stat. 728, Ch. 451), sometimes cited as "Shipping Act, 1916", for the purpose of the construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States.

630 2. That your petitioner is a creditor of The Pusey and Jones Company, the above named defendant, in an amount exceeding Five Million Dollars for moneys advanced to the said defendant, which said sum with accrued interest at the rate of five per cent. per annum from Oct. 1st, 1919 is secured by a certain mortgage made by said The Pusey and Jones Company to your petitioner, bearing date the Third day of August, 1918, and recorded in the office for the recording of deeds, &c. in New Castle County, State of Delaware, in Mortgage Record F, Vol. 16, Page 41, and in the office of the Register of Deeds of the County of Camden, State of New Jersey, in Book 157 of Mortgages, p. 78; that said Mortgage is a lien on the real property therein described, located in the county of Camden, State of New Jersey, and in the county of New Castle, State of Delaware, and on all of the personal property of every kind, character and description, owned by the said defendant at the time of the execution and delivery of said mortgage and thereafter acquired. Your petitioner begs leave to refer to the agreement made between your petitioner and the defendant company, dated May 14, 1918, pursuant to which said mortgage was given, and to the bond bearing date August 3, 1918, given by said defendant to your petitioner, and to the said mortgage securing the payment of said bond, copies of which instruments are annexed as exhibits to the affidavit

of Frederic D. McKenney filed in this cause on the part of the defendant.

3. That default has been made by the said defendant in the payment of the principal secured by said bond and mortgage and in the payment of interest thereon. That a sum in excess of Five Million Dollars is due on said mortgage for principal, together with interest.

4. That from time to time between the Fourteenth day of May, 1918, and the First day of July, 1921, your petitioner loaned
631 and advanced to the defendant at its request large sums of money in addition to the amounts secured by said bond and mortgage, which sum aggregates more than \$1,600,000 which said sums of money were used and expended by the defendant in making improvements to its plants in New Jersey and Delaware, in paying its debts due and owing to third parties, and also for the purposes of working capital. That the amounts due to your petitioner from the said defendant for such advances greatly exceed the sum of \$1,600,000 and are now due and payable to your petitioner, but your petitioner is unable at this time to accurately state the entire amount of the indebtedness to it of the defendant for moneys so advanced.

5. That your petitioner is also a creditor of the defendant in a large sum of money for moneys overpaid defendant by your petitioner in alleged cost of construction of ships built for your petitioner by defendant, but that your petitioner is at this time unable to state the amount due and owing to it from said defendant in this account.

6. That your petitioner is having an extensive audit made of its accounts with defendant, and that defendant is indebted to your petitioner in various sums of money in addition to the above stated indebtedness, the amounts and details of which your petitioner is not at this time able to state.

7. That your petitioner has an interest in the subject of the bill of complaint and in obtaining the relief prayed by the complainant, that the defendant is insolvent within the meaning of the act of the Legislature of the State of Delaware, recited in the bill of complaint, as stated in said bill, and your petitioner asks leave to be joined as a party complainant in said bill of complaint.

632 Wherefore, your petitioner prays this Honorable Court for an order joining it as a party complainant in the above entitled cause.

And your petitioner will ever pray, etc. United States Shipping Board Emergency Fleet Corporation, By (Sgd.) James H. Hughes, Jr., U. S. Atty., Dist. of Del., (Sgd.) Lindabury, Depue & Fawks, (Sgd.) Josiah Stryker, Of Counsel.

STATE OF DELAWARE,

New Castle County, ss:

Josiah Stryker, being duly sworn according to law, deposes and says:

That he is a member of the firm of Lindabury, Depue and Faulks, attorneys and counsellors at law of the State of New Jersey; that said

firm has been retained by the United States Shipping Board Emergency Fleet Corporation as Counsel in all matters relating to the transactions between said United States Shipping Board Emergency Fleet Corporation and The Pusey and Jones Company and is duly authorized by said United States Shipping Board Emergency Fleet Corporation to file and verify the foregoing petition in its behalf; deponent further says that he has read the foregoing petition and that he is informed and believes that the statements contained therein are true. Deponent is making this affidavit because no officer of the said United States Shipping Board Emergency Fleet Corporation is now within the district of Delaware. (Sgd.) Josiah Stryker.

Subscribed and sworn to before me this eighth day of October, A. D. 1921. [Seal.] (Sgd.) H. C. Mahaffy, Jr., Notary Public.

633 STATE OF DELAWARE,
New Castle County, ss:

Clarence R. Haas, being duly sworn according to law, deposes and says:

That he is an auditor in the employ of the firm of Lybrand, Ross Bros. and Montgomery, accountants and auditors; that deponent for the past three (3) months has been engaged in examining the accounts of the United States Shipping Board Emergency Fleet Corporation with The Pusey and Jones Company; that such examination has not yet been completed; that the above named defendant, The Pusey and Jones Company, is indebted to the United States Shipping Board Emergency Fleet Corporation, according to the accounts of said United States Shipping Board Emergency Fleet Corporation in a large sum of money, exceeding One Million Six Hundred Thousand Dollars (\$1,600,000) for monies advanced by said United States Shipping Board Emergency Fleet Corporation to the said The Pusey and Jones Company at its request which said sum of money is now due and payable; deponent further says that said The Pusey and Jones Company is also indebted to the United States Shipping Board Emergency Fleet Corporation in a sum exceeding Five Million Dollars (\$5,000,000) and accrued interest thereon, which said last mentioned indebtedness is secured by the bond of the said The Pusey and Jones Company bearing date August 3, 1918, in the sum of Five Million Dollars (\$5,000,000) and by mortgage of said The Pusey and Jones Company bearing even date with said bond, covering all of the real property of said The Pusey and Jones Company located in the county of Camden, in the State of New Jersey, and in the county of New Castle in the State of Delaware, and all of the personal property owned by said company at the date of the execution and delivery of said bond and

634 mortgage and also all of the personal property thereafter acquired by said company; that said The Pusey and Jones Company is also indebted to said United States Shipping Board Emergency Fleet Corporation in a large sum of money for amounts overpaid said The Pusey and Jones Company by said United States Shipping Board Emergency Fleet Corporation for alleged construe-

tion costs of ships built by said The Pusey and Jones Company for said United States Shipping Board Emergency Fleet Corporation, the amount of which has not yet been ascertained by deponent.

Deponent further states that he has read the petition of United States Shipping Board Emergency Fleet Corporation to intervene in the above entitled cause and that he is informed and believes that the matters therein stated are true. (Sgd.) Clarence R. Haas.

Subscribed and sworn to before me this eighth day of October, A. D. 1921. [Seal.] (Sgd.) H. C. Mahaffy, Jr., Notary Public.

635 SCHEDULE B—ORDER OF INTERVENTION.

In the District Court of the United States for the District of Delaware.

No. 429. In Equity.

HANS KARLUF HANSSEN, Complainant,

v.

THE PUSEY AND JONES COMPANY, Respondent.

And now, to wit, this eighth day of October, A. D. 1921, upon considering the foregoing petition and on motion of James H. Hughes, Jr., Esq., United States Attorney for the District of Delaware, Solicitor for the petitioner, it is ordered by the court that the said petition may be filed and that said petitioner have leave to become a party complainant to the said cause, hereby granting and reserving to any of the parties to said cause, by intervention or otherwise, the right to raise any questions with respect to this order within ten days from the date hereof, and in the absence of cause shown, the leave hereby granted shall be absolute. (Sgd.) Hugh M. Morris, J.

636 UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Henry C. Mahaffy, Jr., Clerk of the District Court of the United States for the District of Delaware, do hereby certify that I have carefully compared the foregoing writing with the original petition of United States Shipping Board Emergency Fleet Corporation for leave to intervene, in the case of Hans Karluff Hanssen v. The Pusey and Jones Company, No. 429 in Equity, pending in said court, and with the order of said court entered upon said petition on the eighth day of October, 1921, and find the same to be a true and correct copy of said original petition and order so full and complete as the same now remains on file and of record in my office.

I further certify that to the day of the date hereof no person has by intervention or otherwise raised any question with respect to the order of said court of October 8, 1921, entered upon said petition of intervention.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Wilmington, in said district, this twenty-fifth day of November, A. D. 1921. [Seal.] H. C. Mahaffy, Jr., Clerk.

637

DECISION.

[Filed March 15, 1922.]

[Title omitted.]

And afterwards, to wit, on the fifth and sixth days of December, 1921, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Hon. Joseph Buffington, Hon. Victor B. Woolley and the Hon. J. Warren Davis, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the fifteenth day of March, 1922, come the parties aforesaid by their counsel aforesaid, and the Court now being fully advised in the premises, renders the following decision:

638

[Title omitted.]

Before Buffington, Woolley, and Davis, Circuit Judges.

WOOLLEY, *Circuit Judge*: On a bill of complaint filed by Hansen, a subject of the King of Norway, the District Court entered a decree appointing receivers for The Pusey and Jones Company, a corporate citizen of Delaware, 276 Fed. 296. The respondent took this appeal.

There is little dispute about the facts. For the purpose of this review, they are abridged as follows:

In 1917, Christoffer Hannevig acquired all the capital stock, both common and preferred, of three corporations of the State of Delaware. They were The Pusey and Jones Company, which had a shipbuilding plant at Wilmington, Delaware; the New Jersey Shipbuilding Company, and the Pennsylvania Shipbuilding Company, which had plants at Gloucester, New Jersey. Hannevig was also the owner of nearly all the stock of two other corporations, the Bulk Oil Transports Company and the Manass Steamship Corporation. He was the president, and owner of substantially all the stock, of Christoffer Hannevig, Inc., a corporation engaged in the business of shipbrokering.

The Transports Company entered into a contract with The Pusey and Jones Company for the construction of five ships at sums agreed upon. The Steamship Corporation entered into contracts with the New Jersey Shipbuilding Company for the construction of four vessels at stipulated sums. In August, 1917, the United States Shipping Board Emergency Fleet Corporation requisitioned construction under these contracts. After this was done, Hannevig, through his corporate control, caused the Transports Company and the Steam-

ship Corporation to sell their contracts for the nine ships to nine Norwegian persons and corporations. At this sale, the nine Norwegian interests paid Hannevig a profit over and above the original price on each contract, and in addition a sum equal to 10 per cent. of the original contract prices, which Hannevig represented had been paid by the Transports Company and the Steamship Corporation to The Pusey and Jones Company and the New Jersey Shipbuilding Company, respectively, at the time the contracts were entered into. This representation was wholly false. Thus Hannevig became indebted to the nine Norwegians in an amount upwards of \$1,200,000.

On learning this situation, the Norwegians sent Hans Karulf Hanssen (later the complainant in this action) to the United States with authority, in writing, to collect the moneys owed them by Hannevig and "to take all legal steps which he may deem necessary in order to secure (their) said claims."

640 After his arrival, Hanssen obtained from Hannevig approximately \$565,000, leaving due something over \$700,000. To secure this balance Hannevig, on February 13, 1920, gave Hanssen subject to redemption upon payment of his indebtedness to his Norwegian creditors, three certificates for seventy-two hundred shares of the preferred stock of The Pusey and Jones Company. The first two certificates (for seven thousand shares) were in the name of Christoffer Hannevig, Inc., the accompanying power of attorney being signed by the corporation for transfer to Hannevig, followed by Hannevig's endorsement in blank. The third certificate (for two hundred shares) was in the name of Hannevig with the accompanying power of attorney signed by him for transfer in blank. As further security, Hannevig gave Hanssen nine promissory notes signed by The Pusey and Jones Company, amounting in all to the sum of \$650,000, of which eight, aggregating \$350,000, were payable to Christoffer Hannevig, Inc., and by it endorsed in blank; and the ninth, for \$300,000 was payable to Christoffer Hannevig and by him endorsed in blank. All these notes were overdue but each had been extended by endorsement in accordance with a letter to the United States Shipping Board Emergency Fleet Corporation,—which had made heavy advances to The Pusey and Jones Company,—providing that the notes should not be payable until the completion of certain ships. The ships were finished in 1919. It further appears (but not by endorsement) that there was an agreement between The Pusey and Jones Company, the Shipping Board, Hannevig and Christoffer Hannevig, Inc., under which the notes were not to be enforced until a mortgage of The Pusey and Jones Company held by the Shipping Board was liquidated. The mortgage remains unsatisfied.

Sometime prior to this transaction, the three Delaware corporations had been consolidated into one corporation under the
641 laws of Delaware, taking the name of The Pusey and Jones Company. Two days before the settlement with Hanssen, Hannevig as President of The Pusey and Jones Company (consolidated), sold its Gloucester plant to the Baltimore Dry Docks and

Shipbuilding Company and received in part payment a check of the latter concern for \$750,000 payable to the order of The Pusey and Jones Company, pledging with the purchaser large blocks of the stock of The Pusey and Jones Company as security for the return of the money in the event the Shipping Board failed to satisfy its mortgage against the plant. On the same day Hannevig endorsed the check in the name of The Pusey and Jones Company and deposited it to the credit of Christoffer Hannevig, Inc. (his own shipbrokerage concern) and thereafter used the funds in its business. No action, then or later, was taken by The Pusey and Jones Company against Hannevig for this misappropriation of its funds or to offset its liability on its notes pledged to Hanssen.

After the transaction with Hannevig, Hanssen went back to Norway, at all time retaining possession of the securities. During the succeeding year demands for payment were made upon Hannevig without avail. Finally, in April, 1921, Hanssen returned to the United States. In the meantime a dispute between The Pusey and Jones Company and the United States Shipping Board had grown out of their mutual obligations, the Shipping Board indicating a purpose to deduct \$3,700,000 from its indebtedness of \$7,191,000 to The Pusey and Jones Company. Also a number of suits had been brought against The Pusey and Jones Company. In one, the Baltimore Dry Docks and Shipbuilding Company had recovered a judgment against The Pusey and Jones Company for \$800,125. Regarding this judgment under the circumstances as invalid and realizing there remained but four days of the term of the court at

612 which the judgment has been rendered within which to attack its validity, Hanssen filed a bill of complaint in the District Court, describing himself as a stockholder and creditor of The Pusey and Jones Company, reciting the before mentioned transaction by which he acquired its stock and notes, alleging the Company's insolvency, and praying for the appointment of receivers with authority to take over its assets, administer its affairs and particularly to proceed by appropriate action to vacate and set aside the judgment referred to. Pursuant to the prayer of the bill, the court, on June 9, 1921, entered a decree *ex parte* appointing receivers. This decree was *nisi* in character as it ordered The Pusey and Jones Company to appear on a named day and show cause why the said receivers should not be continued during the pendency of the action.

Pending what was in effect a rule to show cause, the nine Norwegian parties, personal and corporate, were, on their petition, granted leave to intervene as parties complainant. During the same period, an involuntary petition in bankruptcy was filed against The Pusey and Jones Company in the District Court of the United States for the Southern District of New York. On its answer admitting insolvency, the Company was adjudged a bankrupt. Later, the adjudication was attacked by the receivers appointed by the District Court of the United States for the District of Delaware, resulting in litigation not pertinent to the matter before us on this appeal except

in the final result that the adjudication was annulled and the bankruptcy petition dismissed.

Following the institution of the proceeding in bankruptcy but before its termination, the rule to show cause why the receivers should not be continued came on for hearing. On the first day of August, 1921, the District Court, in an opinion handed down on July 21, 1921, made its decree of June 1, 1921, appointing receivers, absolute.

276 Fed. 296. The Pusey and Jones Company by this appeal now attacks the validity of that decree on the grounds urged before and denied by the court below.

Having shown diverse citizenship of the parties, the complainant by his will invoked the equity jurisdiction of the District Court to enforce a right conferred by a state statute. *Darragh vs. Wetter Mfg. Co.*, 78 Fed. 7, 14, 15; *Jones vs. Mutual Fidelity Co.*, 123 Fed. 596 (D. C. Del.); *Land Title & Trust Co. vs. Asphalt Co. of America*, 127 Fed. 1, 17, 18, (C. C. A. 3rd). This statute is paragraph 3883 of the Revised Code of Delaware of 1915. With the parts on which questions have been raised italicized by us, it reads as follows:

"Whenever a corporation *shall be insolvent*, the Chancellor, on the *application* and for the benefit of any creditor or stockholder thereof, may, at any time, *in his discretion*, appoint one or more persons to be receivers of and for such corporation. * * * the powers of such receivers to be such and continued so long as the Chancellor shall think necessary: * * *

On its interpretation of the statute in a number of aspects, the respondent challenges the right of the complainant to bring this action and the jurisdiction of the District Court to hear it.

On the primary question of jurisdiction the respondent contends that by virtue of the Constitution of the State of Delaware the Chancellor of the State of Delaware, besides holding the Court of Chancery, "which is merely one of his functions," is vested with other powers, among them the supervisory or visitorial power of the state exercised by the Chancellor under the common law, and that, in consequence, the cited paragraph of the Revised Code does not give the Court of Chancery jurisdiction of a bill in equity for the appointment of receivers, but confers upon the Chancellor, as distinguished from the Court of Chancery, visitorial power over corporations when "application" is made to him, the exercise of which is executive, not judicial. From this premise the respondent deduces the conclusion that the District Court of the United States for the District of Delaware, though other essentials of jurisdiction be present, is without jurisdiction to administer this provision of state law.

While admittedly in certain cases powers personal to the Chancellor are conferred upon him by statute, the error in this contention is due perhaps to pardonable confusion arising from statutes—not always carefully phrased—which define the duties and powers of the Chancellor in administering equity jurisprudence in the Court of Chancery and which, in this respect, do not confer upon him equity powers exclusive of the powers of the Court of which he is the judge. Illustrations of this may be found in the first paragraph of

the chapter on the Court of Chancery in the Revised Code of Delaware (Paragraph 3844) defining the jurisdiction of the Court of Chancery, and in the fifth paragraph, presenting rules for the Court of Chancery, and naming powers of the Chancellor in respect thereto, (Paragraph 3848), where reference to the Court of Chancery and to the Chancellor is made in the same sense and without distinction.

While the question whether the Court of Chancery of Delaware has jurisdiction by bill of complaint to appoint receivers for an insolvent corporation has not, so far as we are informed, been raised or decided in any Court in the State of Delaware, the reports abundantly show that the Court of Chancery of Delaware has regularly exercised such jurisdiction on the assumption that it possessed it. *Throughgood vs. Georgetown Water Co.*, 9 Del. Ch. 84; *Ellis vs. Penn. Beef Co.*, 9 Del. Ch. 213; *Mark vs. American Brick Mfg. Co.*, 10 Del. Ch. 58; *Ross vs. South Delaware Gas Co.*, 10 Del. Ch. 236; *In re D. Ross & Son, Inc.*, 10 Del. Ch. 434; *Sill vs. Kentucky Coal & Timber Development Co.*, 11 Del. Ch. 93, 94; *Fell vs. Securities Co. of N. A.*, 11 Del. Ch. 101; *Whitmer vs. Whitmer and Sons, Inc.*, 11 Del. Ch. 185, 222, 225; *Hopper vs. Fesler Sales Co.*, 11 Del. Ch. 209. Acting on the same assumption the District Court of the United States for the District of Delaware has, in appropriate cases too numerous to mention, exercised the same jurisdiction.

This uninterrupted and unquestioned conduct of both state and federal courts for decades is a contemporaneous construction of the statute in opposition to the attack now made upon the jurisdiction of the Court of Chancery of Delaware and, similarly, upon the jurisdiction of the District Court of the United States for the District of Delaware, to entertain thereunder a bill in equity for the appointment of receivers. Until the courts of Delaware have held the contrary, we shall not close a door so long open. *Darragh vs. Wetter Mfg. Co.*, 78 Fed. 7.

Coming to the question of the right of the complainant to bring this action, it appears from the bill that the complainant endeavored to bring himself within the statute by averring first, that he is a stockholder, and second, that he is a creditor of the respondent corporation—persons for whose benefit the statute affords relief by receivership—and, third, that the respondent corporation is insolvent. The respondent, in traversing all these averments, challenges Hanssen's qualification as complainant in the first two respects, and, failing this, his right to relief in the third respect.

We shall first inquire into the qualification of the complainant as a creditor of the respondent corporation.

Hanssen's relation to The Pusey and Jones Company is that of holder by endorsement in blank after maturity of nine of that company's promissory notes. If The Pusey and Jones Company, as maker of the notes, is liable to Hanssen, the holder of the notes, then Hanssen is a "creditor" of The Pusey and Jones Company within the terms of the statute. The test of the liability of The Pusey and Jones Company on its notes in the hands of Hanssen is, first, whether Hanssen has a legal right to sue and re-

cover on the notes; and second, whether in such an action The Pusey and Jones Company can assert against Haussen the equities it holds against Hannevig, thereby defeating a right of action in Haussen otherwise valid.

The law on the first question, we think, is settled. It arises out of the position of the holder of negotiable paper which the law everywhere recognizes to be of an exceptional character. For this reason the law indulges in presumptions. The basic presumption is that of title to a note arising from possession, *Parsons vs. Utica Cement Mfg. Co.*, 82 Conn. 333; or by endorsement even though in blank and after maturity without notice to the maker, *Davis vs. Miller*, 14 Grat. 1; *Kunkel vs. Spooner*, 9 Md. 452.

Possession of a note with its presumption of title enables the holder to maintain a suit on the note in his own name. Courts will not inquire whether the holder sues for himself or as trustee for another, nor into his right of possession unless on an allegation of *mala fides*. *Kunkel vs. Spooner*, 9 Md. 462. To the same effect are cases cited in 63 L. R. A. 516, note 2 and 3 R. C. L. 980, 981.

The case of *Pearce vs. Austin*, 4 Wharton (Pa.), 497, illustrates the rule. There a note was endorsed in blank, and, coming into the hands of Austin, agent for an unincorporated company, action was instituted by him in his own name as holder of the note. The question as stated by the Supreme Court of Pennsylvania was: "Can an agent bring a suit on a promissory note in his own name?"

617 In answering this question the Supreme Court said:

"A holder of negotiable paper can maintain an action on it in his own name, without showing title to it. The court will not inquire into his right to the paper, or his right to maintain a suit upon it, unless circumstances appear showing his possession to be *mala fides*. *Dean vs. Hewett*, 5 Wendell, 257; *Talman vs. Gibson*, 1 Wall 308; *Livingston vs. Gibson*, 3 Johns. Cases, 263."

"This principle applies to a note payable to bearer, or endorsed in blank; for in either case an action can be maintained in the name of any person, without the plaintiff being required to show that he has any interest in it, unless he come into the possession of the note under suspicious circumstances. Here there is no allegation of *mala fides*, so that the case stands clear of that objection. A suit is brought by Austin, who is a trustee or agent for the company. He has the legal title to the bill, and the suit is brought in the name of the legal owner. Stating that he is the agent of the Union Glass Works is equivalent to showing that the suit is for their use. This brings it within the principle of the cases cited. But *Mauran vs. Lamb*, 7 Cow. 174 is still nearer the point. It is there held, that one holding a check or note payable to bearer, as a mere agent, may sue on it in his own name, and that it does not lie with the opposite party to assert the plaintiff's want of interest. It can certainly make no difference whether the note is payable to bearer, or endorsed in blank, and in the possession of a bona fide holder."

Beyond the cases which hold that courts will not inquire whether the plaintiff holder of the note sues for himself or as trustee
618 for another are cases which hold quite directly that an agent or trustee who has received a promissory note by endorse-

ment in blank holds the title as against all parties thereto, except the principal, and may maintain an action thereon in his own name. *Poorman vs. D. O. Mills & Co.*, 35 Cal. 118; *Chase & Grew vs. Burnham & Dow*, 13 Vt. 447; *Illinois Conference vs. Plagge, Admr.*, 177 Ill. 431; *Pearce vs. Austin*, 4 Wharton (Pa.) 487.

On these authorities we are of opinion that the complainant has shown legal title in the notes on which he founded his right to maintain the bill for receivers, and, there being no question of mala fides in their acquisition, that he is qualified to bring and prosecute this action in his own name, although, as it appears in the record, nine other persons have interests in the notes. If there is infirmity in this conclusion it is cured by the fact that these nine interested persons have, by intervention, become parties complainant in the action.

A similar situation arose in *Illinois Conference vs. Plagge*, 177 Ill. 431, where the court, holding that a suit was properly brought by an agent who had received a note endorsed in blank for collection, allowed the parties beneficially interested in the note to intervene. Thus in the case at bar—though not receding from our finding that Hanssen has shown himself qualified as a creditor within the meaning of the statute to bring this action on the notes—the full title to the notes, the legal title in Hanssen and the equitable title in the nine Norwegians, is now present, and therefore will carry the case, at least, to a hearing. The diversity of citizenship of all parties, legal and equitable, is shown and the requisite amount is declared. Hence the jurisdiction of the District Court to entertain the bill of complaint is fully established.

The next question is whether Hanssen's right to maintain this action on notes, otherwise valid, is lost because the notes, having been transferred after maturity, are subject to all equities between the original parties, including particularly the claim of *The Pusey and Jones Company*, the maker, against *Hannevig and Christoffer Hannevig, Inc.*, the payees, for their misappropriation and use of \$750,000 of the maker's money. In support of this contention the respondent relies on the rule followed in some jurisdictions, notably that of New York, extending in the latter through cases beginning with *O'Callaghan vs. Sawyer*, 5 Johns. 118 to *Davidson vs. Alfara*, 80 N. Y. 660.

We are of opinion that the New York rule is an exception to the general rule that an endorsee takes paper subject only to such equities or defenses as attach to the bill or note itself, and not to claims arising out of collateral matters or independent transactions, whether they arise against the payee or an intermediate holder. 3 R. C. L. 1043 and cases.

The general rule, or, perhaps, the common law rule, followed by the Supreme Court of the United States in *National Bank of Washington vs. Texas*, 20 Wallace 72, is stated by Mr. Justice Swayne as follows:

"The transferee of overdue negotiable paper takes it liable to all the equities to which it was subject in the hands of the payee, but these equities must attach to the paper itself and not arise from any

collateral transaction. A debt due to the maker from the payee at the time of the transfer cannot be set off in a suit by the endorsee of the payee although it might have been enforced if the suit had been brought by the latter."

As the equity or the right of action of The Pusey and Jones Company against Hannevig, and perhaps against Christoffer Hannevig,

Inc., for misappropriation and use of its money arose subsequent to the making of the notes and was in no way connected with the notes themselves, and, further, as the notes were delivered, though after maturity yet without notice of this transaction or of the agreement extending the time of enforcement, we are of opinion that the notes were not affected thereby and hence came into and remain in the hands of Hanssen, the holder, free thereof.

But the respondent further contends that an action of this character may be maintained only by a judgment creditor; that the complainant, even if he be a creditor, is not within this class, and, therefore, is without right under the statute, to maintain this action. This question was decided adversely to the respondent's contention by the District Court of the United States for the District of Delaware in *Jones vs. Mutual Fidelity Company*, 123 Fed. 506. Later, the question was settled by the Court of Chancery of the State of Delaware in *Sill vs. Kentucky Coal & Timber Development Co.*, 11 Del. Ch. 93, 100. That was a case in which the complainant averred in the bill that he was "a creditor of the company based on a promissory note made by it, but not then due, and also a stockholder of the company." The object of the bill was the appointment of a receiver based on insolvency. The court, construing the statute here in question held that: "It is not necessary that the complainant be a judgment creditor." See *Darragh v. Wetter Mfg. Co.*, 78 Fed. 7, 14, 15.

Our judgment, therefore, is that the learned trial judge committed no error in holding Hanssen qualified as a creditor within the statute to maintain his bill of complaint to final hearing. Being of this opinion, we again concur with the learned trial judge that it does not become necessary to consider and decide his qualification as a stockholder.

The next question bearing on the complainant's right to maintain this action is the insolvency of the respondent company. That has been so frequently admitted by the company itself and so clearly established within the Delaware rule that discussion would add nothing to its certainty.

Finally, the respondent charges that the court erred in failing properly to exercise discretion in the appointment of receivers. Whether the court abused its discretion—the only inquiry on this phase of the appeal—depends, first, on the subject matter to which its discretion was addressed, and second, on the manner in which its discretion was exercised. Assuming that, on the affidavits, the complainant's charge of fraud and collusion in obtaining the judgment of the Baltimore Dry Docks and Shipbuilding Company against The Pusey and Jones Company was not sustained, there remain ample

matters to which the court could validly direct its discretion. That the court did not yield to a personal whim but based its decision on valid grounds is shown by the discussion in its opinion. *Sill vs. Kentucky Coal & Timber Development Co.*, 11 De. Ch. 93, 98, 99.

The decree below is affirmed.

[Endorsement omitted.]

652

ORDER AFFIRMING DECREE.

[Filed March 15, 1922.]

[Title omitted.]

Appeal from the District Court of the United States, for the District of Delaware.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of Delaware, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, March 15, 1922. Victor B. Woolley, Circuit Judge.

[Endorsement omitted.]

653

MANDATE.

[Filed April 19, 1922.]

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the District Court of the United States for the District of Delaware, Greeting:

Whereas, lately in the District Court of the United States for the District of Delaware, before you or some of you, in a cause between The Pusey and Jones Company (respondent below) Appellant, and Hans Karluf Hanssen (Complainant below) Appellee, a decree was entered in the said District Court on the first day of August, 1921, which decree is of record in the office of the Clerk of said District Court, to which reference is hereby made, and the same is hereby expressly made a part hereof, as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Third Circuit by virtue of an appeal agreeably to the Act of Congress, in such case made and provided, more fully and at large appears.

And whereas, in the term of October, in the year of our Lord one thousand nine hundred and twenty-one, the said cause came on to be heard before the said United States Circuit Court of Appeals on the said transcript of record and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in

this cause be, and the same is hereby affirmed, with costs; and that the said Appellee, Hans Karluf Hanssen, recover against the said Appellant, Pusey and Jones Company, in the sum of Twenty Dollars (\$20) for his costs herein expended: and have execution therefor;

Philadelphia, March 15, 1922.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, at Philadelphia, the nineteenth day of April, in the year of our Lord one thousand nine hundred and twenty-two (1922).

Costs of Hans Karluf Hanssen:

Clerk
Printing Record .....	.....
Attorney	\$20.00
	<hr/>
	\$20.00

SAUNDERS LEWIS, JR.,

Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

[Endorsement omitted.]

655 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original record in the case of: Pusey & Jones Co., vs. Hans Karluf Hanssen, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 23rd day of December in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the United States the one hundred and forty-seventh.

[Seal of United States Circuit Court of Appeals, Third Circuit.]

SAUNDERS LEWIS, JR.,

Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

WRIT OF CERTIORARI AND RETURN.

Filed Dec. 26, 1922.

UNITED STATES OF AMERICA, *ss.*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Being informed that there is now pending before you a suit in which The Pusey and Jones Company is appellant, and Hans Karluf Hanssen is appellee, No. 2780, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the District of Delaware, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-two.

WM. H. STANSBURY,*Clerk of the Supreme Court of the United States.*

[Endorsed:] 2780. File No. 28,981. Supreme Court of the United States, October Term, 1923. No. 431. The Pusey and Jones Company vs. Hans Karluf Hanssen. Writ of Certiorari.

[Endorsement omitted.]

JAN 22 1913

WM. B. ST. CLAY

Supreme Court of the United States

OCTOBER TERM, 1922.

THE PUSEY AND JONES COMPANY,
(a corporation),

Petitioner,

AGAINST

HANS KARLUF HANSSEN, ET AL.,
Respondents,

No. 431

Petition for
writ of Certi-
orari to the
United States
Circuit Court
of Appeals for
the Third Cir-
cuit.

REPLY OF RESPONDENTS TO REASONS AS- SIGNED FOR THE MOTION TO ADVANCE

On page three of the motion, petitioner states that it "was engaged in a profitable manufacturing business and there was no reason why it should not have continued to transact its business." A sufficient answer is that the petitioner filed its voluntary petition in bankruptcy within a few weeks after the filing of the bill of complaint. (Rec. pp. 580-602.)

On the same page, the petitioner sets forth six items of expense incurred by the receivers during the receivership. In brief explanation of the items the following may be said:—

The first item of \$38,000.00 represents \$2,000.00 a month paid to the Delaware receivers for nineteen months' service under the orders of the District Court. One item of that service was dispensing with two unnecessary officers of the Company who had been receiving \$19,500.00 a year.

The second item of \$20,000.00 represents fees to attorneys for receivers in successfully combatting continuous litigation instituted by the petitioner, which was concluded by the recent mandates of the Circuit Courts of Appeal for the Second and Third Circuits.

The third item of \$15,000.00 represents a fee authorized by the District Court of Delaware to attorneys engaged to prosecute the claim of \$14,000,000.00 against the Shipping Board for services rendered and to be rendered.

The fourth item of \$9,000.00 represents fees allowed incident to the dismissal of bankruptcy proceedings improvidently instituted in behalf of the petitioner. The ancillary receivers in this case in New Jersey have received no compensation.

The fifth item of \$15,000.00 was paid to an appraisal company to determine the important claim of amortization against the Shipping Board and to afford a basis for making the receivers' returns to the Internal Revenue department.

The sixth item of \$3,000.00 for "accountant's fees and miscellaneous" covers items not understood by the respondent.

On page four, petitioner states that "the receivers have spent at petitioner's plant at Gloucester, N. J.—which has not been in opera-

tion, about \$170,000.00." Of this sum \$53,400.00 represents an allowance to one receiver in bankruptcy, interest on mortgage and State taxes. The balance represents necessary upkeep of two large shipbuilding plants closed after the war. The previous bankruptcy receivership expenses were much greater, including the issuance of receiver's certificates for \$30,000.00, which remain unpaid, and allowance of \$30,000.00 to the bankruptcy receivers and their counsel. The expense account of the Delaware receivers at the Gloucester plant is \$4000 a month less than that of the bankruptcy receivers.

Depreciation of such plants is inevitable, and has been prolonged because of the vexatious litigation brought about by the petitioner.

On the same page, petitioner states "The result of the appointment of the Receivers has been disastrous to petitioner's business and has tied up the progress of readjustment." The receivership business has been conducted at a profit, and during the past year at a net profit of about \$50,000.00. The Wilmington yard during the receivership has been the busiest one on the Delaware River.

The petitioner's statement that the claim of \$14,000,000.00 against the Shipping Board was near settlement on June 9, 1921, is without foundation. The Shipping Board refused negotiation of the claim because its auditors could not complete their report before September, 1922. The Delaware receivers have negotiated settlements of two other disputed claims with the Shipping Board.

Finally, petitioner states that the receivers

have not pressed to have the Baltimore Dry Docks & Shipbuilding Company judgment set aside. The receivers obtained a rule to set aside this judgment and filed their affidavits and exhibits in support thereof. It became apparent to the receivers that the effective handling of this matter would have to be deferred until a final decree was entered in this suit. The petitioner is alone responsible for the delay incident to the entry of such a decree.

WILLIAM H. BUTTON,
JOHN P. NIELDS,
WILLIAM G. MAHAFFY,
Counsel for respondents.

January 20, 1923.

FEB 16 1923

RECEIVED

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922

No. 431

THE PUSEY AND JONES COMPANY
(a corporation)

Petitioner

against

HANS KARLUFF HANSSEN

Respondent

AND

JACOB PREBENSEN, Jr., H. KJERSHOW, HARRY BORTH-
EN, A/S TROMP, A/S MARITIM, A/S HAUG, A/S
MERCATOR, A/S SORLANDSKE LLOYD, and E. & N.
CHR. EVENSEN

Intervenors-Respondents

Brief on Behalf of Petitioner

LINDLEY M. GARRISON
CHARLES H. TUTTLE
SELDEN BACON
SAUL S. MYERS

Counsel for Petitioner



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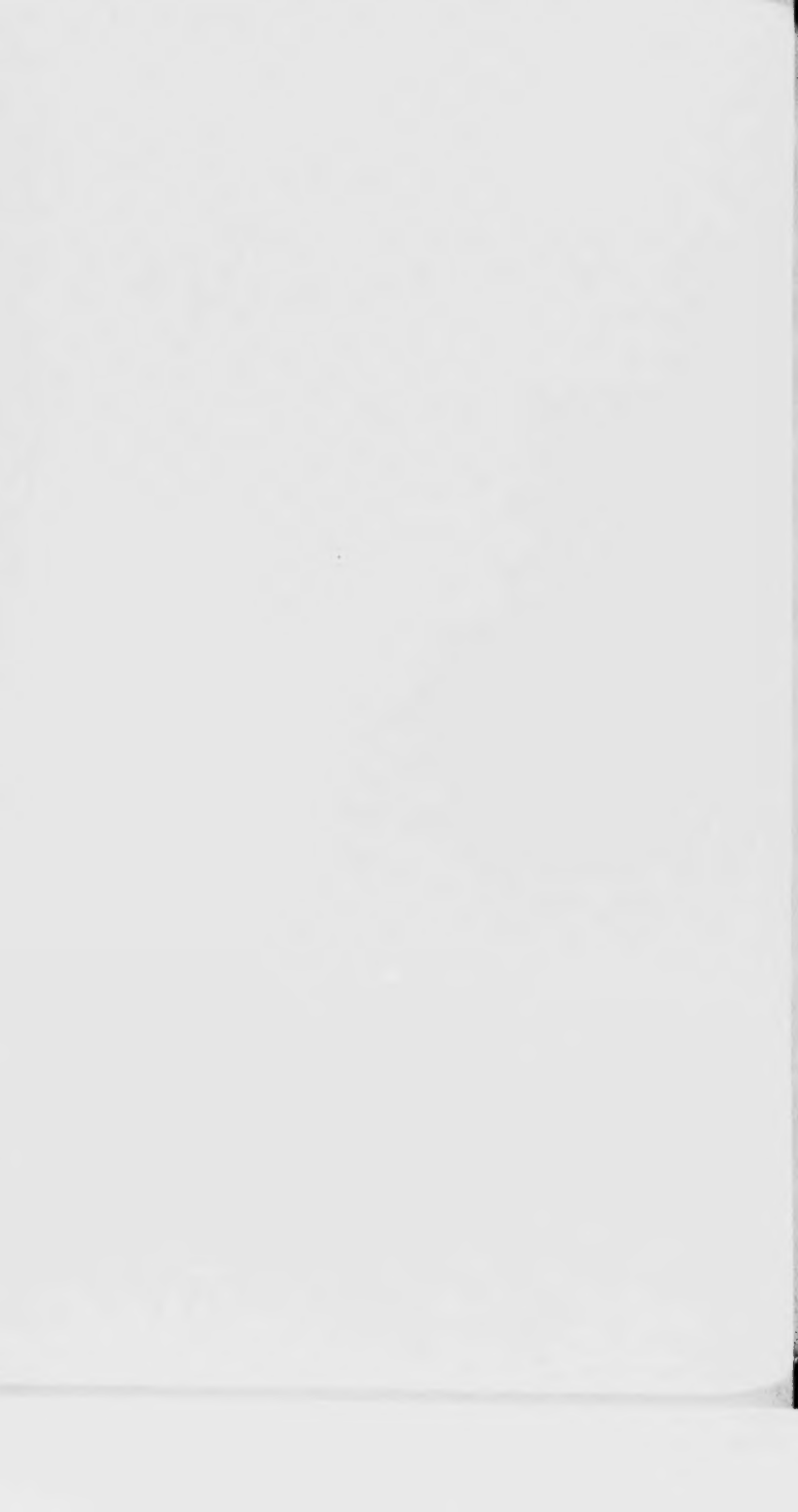
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Argued by
Lindley M. Garrison.

Supreme Court of the United States

OCTOBER TERM—1922.

THE PUSEY AND JONES COMPANY
(a corporation),

Petitioner,

against

HANS KARLUF HANSSEN,

Respondent,

and

JACOB PREBENSEN, Jr., H. KJERSCHOW, HARRY BORTHEN, A/S
TROMP, A/S MARITIM, A/S
HAUG, A/S MERCATOR, A/S SORLANDSKE LLOYD, and E. & N.
CHR. EVENSEN,
Intervenors-Respondents.

No. 431.

On writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR PETITIONER.

Statement of the Case.

The original bill in this cause which is now before this Court on writ of certiorari was brought by respondent Hanssen in the United States Dis-

strict Court for the District of Delaware against petitioner, The Pusey and Jones Company.

Hanssen alleges in his bill that he is a creditor and stockholder of The Pusey and Jones Company, that the bill is prosecuted on behalf of all other stockholders and creditors of The Pusey and Jones Company who may contribute to the expense of and become parties to the suit, that The Pusey and Jones Company is insolvent, that it is not a corporation for public improvement, and that the suit is brought under Section 3883 of the Revised Code of Delaware (1915), which statute is hereinafter set forth in full at page 7, together with the only other related statutory provision. The relief prayed in the bill is (Rec., p. 22) :

1. The appointment of a receiver or receivers for the petitioner for the purposes and with the powers enumerated in the statute and such further powers as the Court should deem necessary and proper.
2. A perpetual injunction to restrain petitioner, its directors, officers and agents, from conducting any of the business of the corporation, from receiving and collecting any money due it and from interfering with its business.
3. A decree requiring this petitioner to execute and deliver to complainant a certificate or certificates for 7,200 shares of its preferred stock.
4. Authorization and direction that the receiver or receivers proceed by law to set aside a certain judgment alleged to have been suffered to be entered in favor of the Baltimore Dry Dock & Shipbuilding Company against this petitioner and

to make all proper defense to the action wherein said judgment was obtained.

History of Proceeding.

On the filing of the bill on June 9, 1921, Hanssen moved *ex parte* for the appointment of a receiver or receivers (Rec., p. 78); and the District Court thereupon *ex parte* appointed Willard Saulsbury and Charles B. Evans, of Wilmington, Delaware, receivers of the Pusey & Jones Company, as prayed in the bill, and ordered the Company to show cause on June 18, 1921, why the receivers should not be continued during the pendency of the cause (Rec., pp. 79-82).

Thereupon the Company, on June 11, 1921, moved for an order vacating the receivership upon the grounds that the complainant was not a stockholder or creditor; that the judgment of Baltimore Dry Dock & Shipbuilding Company was not improperly procured; and that the allegations as to petitioner's insolvency were untrue (Rec., p. 83). That motion was denied on June 13, 1921 (Rec., pp. 87-88).

On June 18, 1921, the Company filed its answer to the bill of complaint, among other things alleging its principal place of business to be in the City of New York, denying that complainant was a stockholder or creditor, denying its insolvency, and alleging that it had a surplus, over all its obligations, of several million dollars (Rec., pp. 137-149).

The Company in its said answer also asserted that it was entitled to a trial by jury in an action at law under the Constitution of the United States on the question whether the complainant was a creditor of the company (Rec., p. 147); *that the proceeding might not be maintained in equity in*

the courts of the United States (Rec., p. 147); and that the District Court had no jurisdiction to entertain the proceeding, it being one neither at law nor in equity (Rec., p. 148).

On June 18 the order to show cause why the receivers should not be continued in office *pendente lite* was heard, on bill, answer and affidavits (Rec., p. 517); and on August 1, 1921, the District Court made a decree confirming the order of June 9, 1921, appointing the receivers and continuing them *pendente lite* (Rec., p. 603).

Appeal was taken from this decree; and on March 15, 1922, the decree of the District Court was affirmed by the Circuit Court of Appeals for the Third Circuit. The writ of certiorari in this cause was issued to review this determination (Rec., p. 652).

The bill was sustained by both the District Court and the Circuit Court of Appeals as a creditor's bill in equity cognizable by the Federal courts under authority of the Delaware statute. Both courts below have held that the issues as to whether or not Hanssen is a creditor must be determined in equity. The company, therefore, has been deprived of the right seasonably demanded by it, to a common law trial of these issues.

Hanssen's claim to be a creditor was rested on the allegation that he was the transferee of certain notes made by the Pusey & Jones Company. This alleged transfer was from Hannevig, the former president of the Company. At the time of the transfer, these notes had passed maturity, but their collection had been extended by a collateral agreement to a date later than the commencement of this proceeding. The company asserted as offsets exceeding the aggregate of the notes certain claims

against Hannevig existing before the transfer. (See Fifth Point, *post.*) The lower courts declined to find that Hanssen was a stockholder of the Pusey & Jones Company. (See Sixth Point, p. 53, *post.*)

Neither the District Court nor the Circuit Court of Appeals passed upon the question whether Hanssen was a stockholder of the company (Rec., pp. 521, 650).

The Intervenor.

Intervenor-respondents were given leave to intervene as parties complainant by order dated July 6, 1921, after the company's answer was filed (Rec., p. 509). Hanssen alleges that he acted as representative of these intervenors-respondents in bringing his bill and that they are the real parties in interest. This is also their claim (Rec., pp. 501-503); and whatever is said in this brief regarding Hanssen applies to them equally. They have served no bill of complaint.

The United States Shipping Board Emergency Fleet Corporation was given leave to intervene as a party complainant, by the District Court by order, dated October 8, 1921, some two months after the entry of the decree of the District Court (Rec., p. 635). It has not served any bill of complaint, and questions as to its rights were not passed upon by either court below. It is not named a respondent for this reason, although its solicitors have been duly served with this brief and with all papers in connection with the writ of certiorari.

While we do not see how it is possible to argue that if the case at bar fails because of lack of jurisdiction in the court at the time of its inception, it may be saved because of the subsequent intervention of the United States Shipping Board

Emergency Fleet Corporation, we point out that any such argument would be unsound. An intervening proceeding is always ancillary and supplemental under jurisdiction already subsisting. (*Rouse v. Letcher*, 156 U. S., 47; *Adler v. Seaman*, 266 Fed., 828, 832.) An intervenor is bound to take the suit as he finds it. *Northampton Trust Co. v. Northampton Traction Co.*, 112 Atl. (Pa. St.), 871. Hence, the filing of an intervening petition, even if in time, cannot save the original bill if that is bad or without jurisdiction. (*Atlanta etc., Co. v. Carolina Cement Co.*, 140 Ga., 650.) An intervenor is let in solely for the purpose of having his right to the property or fund adjudicated under the jurisdiction acquired between the original parties. (*Mesa Mellon Growers Asso. v. Byrnes*, 211 Ill. Apps., 236; *Boston & M. R. R. v. Sullivan*, 275 Fed., 890). Moreover, the Shipping Board has asked for no relief, has sought no foreclosure, has tendered no issue, and has not offered to put itself on any parity with general creditors.

Principal Questions Presented.

The Pusey & Jones Company claims as the fundamental errors in the decision below, the following:

(1) The Delaware statute did not confer on the Federal court the jurisdiction which it undertook to exercise, to wit: Jurisdiction at the instance of an alleged simple contract creditor, who had no specific lien or security and whose claim was disputed, to maintain this action and secure the appointment of receivers therein.

(2) The action of the courts below improperly deprived the Pusey & Jones Company of its con-

stitutional right to trial by jury of the common law issue as to whether or not Hanssen was a contract creditor of the company.

(3) The action of the courts below improperly permitted the state statute to obliterate the line of demarcation, in substance and procedure, which exists in a Federal court between causes of action at law and causes of action in equity; improperly mingled a cause of action at law with an alleged cause of action in equity; and improperly committed its decision to the equity side. Moreover, the power conferred by that statute are visitorial, rather than judicial.

(4) Since the bill of complaint prayed for no final and ultimate relief, it was not cognizable by a Federal court in equity, and the state statute could not confer jurisdiction on a Federal court in equity to entertain such a bill.

(5) The application, made below, of the Delaware statute to the Federal court, is unconstitutional.

(6) The claim of Hanssen to have the status of a creditor, within the meaning of the Delaware statute, is irrelevant, was denied in its entirety, and was not substantiated.

(7) The claim of Hanssen to have the status of a stockholder, within the meaning of the Delaware statute, is without merit, and raises no question for review at this time, since that claim did not enter into the discretion exercised by the District Court.

Specifications of Error.

These are the substantial questions presented by the assignments of error which appear at pages

605 to 616 of the Record. For brevity's sake we will not set out these assignments of error here, although we rest his appeal on each of them, but we respectfully refer the Court particularly to those assignments numbered 1, 10, 11, 19, 20, 29, 37 and 38.

FIRST POINT.

Hanssen's claim is at best but that of an alleged simple contract creditor of the Pusey & Jones Company. His claim is disputed in its entirety and has not been reduced to judgment. He holds no lien upon the property of the company. The company made timely demand of a common law trial by jury of Hanssen's claim.

Hence, the United States District Court sitting in equity should not have entertained his bill, and had no jurisdiction to do so under the Statute of Delaware or otherwise.

The Delaware statute under which the action is sought to be maintained reads as follows:

"Whenever a corporation shall be insolvent, the Chancellor, on the application and for the benefit of any creditor or stockholder thereof, may, at any time, in his discretion, appoint one or more persons to be receivers of and for such corporation, to take charge of the estate, effects, business and affairs thereof, and to collect the outstanding debts, claims, and property due and belonging to the company with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by such corporation and may be necessary and proper; the powers of such

receivers to be such and continued so long as the Chancellor shall think necessary; provided, however, that the provisions of this Section shall not apply to corporations for public improvement." (Rev. Code Del., 1915, Sec. 3883.)

The next and only related section of the Code provides as follows:

"The receiver or receivers appointed by the Chancellor, of and for any corporation created by or existing under the laws of the State of Delaware, and the successor or successors of any such receiver or receivers, shall upon his or their appointment and qualifications, and the survivors or survivor of such receivers shall upon the death, resignation or discharge of any co-receiver or co-recivers, be vested by operation of law, without any act or deed, with the title of such corporation to all its books, papers and documents, interests in patents, patent rights, copyrights and trademarks, rights of action arising upon contracts or from the unlawful taking or detention of or injury to property of such corporation, and other property, real, personal or mixed of whatsoever nature, kind, class or description, and wheresoever situate, except real estate situate outside the State.

"The receiver or receivers appointed by the Chancellor as aforesaid shall, within twenty days from the date of his or their qualification, file in the office of the Recorder in each County in this State, in which any real estate belonging to such corporation may be situated, a certified copy of his or their appointment and qualification.

"The provisions of this section shall not apply to receivers appointed *pendente lite*." (Rev. Code Del. [1915], Sec. 3884.)

Hence, we have here a case where a Federal

court—on the complaint of one who applies as a simple creditor and where the defendant denies that he is a creditor at all—has appointed receivers for a corporation on affidavits, without a trial of the validity of the claim or of the charge of insolvency, and without the defendant being permitted to produce oral testimony or to cross examine the parties making the charges of insolvency on behalf of the alleged creditor. Relief awardable in equity only after execution return unsatisfied, has preceded trial.

In this summary and drastic method the officers and directors of the company have been divested of the control entrusted to them by the stockholders.

Our first proposition is that the Delaware statute cannot be used in a Federal court to authorize any such result in a case like the present. Its inapplicability, in law and justice, is emphasized by the fact that Hanssen's custody of the notes was solely for purposes of collateral security and that Hannevig who turned over the notes to him after their maturity was then, and still is, indebted to the company in an amount largely exceeding the amount of the notes (Rec., pp. 485, 489, 495, 375, 412).

Our proposition, we submit, has been upheld by this Court, by the Federal courts of inferior jurisdiction, by the courts of almost every State in the Union and by the authoritative text writers. It expresses immemorial limitations on the jurisdiction of courts of equity. It recognizes the ancient right to the trial of common law demands by common law courts and a common law jury. It preserves the right of the defendant to pay the claim if, after common law trial, it be held valid.

It protects the right of the owner of property to retain possession except under due process of law.

"Nothing is better settled," said this Court, in *Smith v. Railroad Co.*, 99 U. S., 398, 401, than that a creditor's bill

"must be preceded by a judgment at law establishing the measure and validity of the demand of the complainant for which he seeks satisfaction in chancery."

The first four sentences of the decision of this Court in *Hollins v. Brierfield Coal and Iron Co.*, 150 U. S., 371, dispose adversely of practically every contention which Hanssen can make either under general principles of equity or under the Delaware statute. Mr. Justice Brewer opened the decision of this Court as follows (p. 378):

"The plaintiffs were simple contract creditors of the company; their claims had not been reduced to judgment, and they had no express lien by mortgage, trust deed, or otherwise. It is the settled law of this court that such creditors cannot come into a court of equity to obtain the seizure of the property of their debtor, and its application to the satisfaction of their claims; and this, notwithstanding a statute of the State may authorize such a proceeding in the courts of the State. The line of demarcation between equitable and legal remedies in the Federal courts cannot be obliterated by state legislation. *Scott v. Neely*, 140 U. S., 106; *Cates v. Allen*, 149 U. S., 451. Nor is it otherwise in case the debtor is a corporation, and an unpaid stock subscription is sought to be reached. *National Tube Works Company v. Ballou*, 146 U. S., 517; *Swan Land & Cattle Company v. Frank*, 148 U. S., 603, 612."

Answering the contention that the funds of the corporation were a trust fund for the benefit of creditors, this Court pointed out that such language was used by way of analogy or metaphor and not to convey the idea that there was a direct or express trust attached to the property, adding (p. 385):

"Neither the insolvency of the corporation, nor the execution of an illegal trust deed, nor the failure to collect in full all stock subscriptions, nor, all together, gave to these simple contract creditors any lien upon the property of the corporation, nor charged any direct trust thereon."

I.

The Rule in Courts of Equity in the absence of state statutes.

The general rule is thus stated in 1 *Pomeroy's Equity Jurisprudence* (11th Ed.), page 3602, Section 1533:

"It is the almost universal rule that a creditor's bill, whether to set aside a fraudulent transfer or to reach equitable assets, will not lie in behalf of mere general creditors who have not prosecuted their claims to judgment, nor in any other manner acquired a lien upon the debtor's property."

That this rule is approved and applied by this Court, is clear from the quotations set forth above from the *Smith* and the *Hollins* cases *supra*. In *Continental Trust Co. v. Toledo etc. R. Co.*, 82 Fed., 642 (aff'd 95 Fed., 497), the present Chief Justice of this Court referred to this rule as "so clearly settled in the federal equitable jurisprudence" as to be "conclusive" (p. 661).

In addition, there is a long and unbroken line of

decisions in the Federal courts of inferior jurisdiction to the same effect. Among them are:

Maxwell v. McDaniels, 184 Fed., 311;
American Can Co. v. Erie Preserving Co.,
 171 Fed., 540;
Nesbit v. North Georgia Electric Co., 156
 Fed., 979;
*Texas Consol. Compress & Manufacturing
 Assn. v. Storrow*, 92 Fed., 5.

The allegation that the alleged debtor has conveyed property in fraud of creditors is no more effective than the allegation of insolvency to give a Federal court in equity jurisdiction to seize the property of the alleged debtor at the instance of a simple contract creditor. As said in *Maxwell v. McDaniel*, 184 Fed., 311 (p. 314):

"At the time the receivers were appointed the complainant's claim had not been reduced to judgment. A Federal Court of equity was therefore without jurisdiction to hear his complaint that his debtor had made a fraudulent conveyance of his property. *Scott v. Neely*, 140 U. S., 108; *Cates v. Allen*, 149 U. S., 451."

In *Gillespie v. Riggs*, 253 Fed., C. C. A., 943, it was held that such an application by a simple contract creditor on the ground of an attempt to defraud creditors "comes under no recognized head of equity jurisprudence" (p. 945).

II.

The Rule in the Federal Courts under state enabling statutes.

Three fundamental principles have always been steadily maintained by this Court as essential to

the independence and constitutional limitations of the Federal courts. In the present instance, all three have, we respectfully submit, been gravely challenged by the decision below. These principles are:

(1) "It is well settled that the jurisdiction of the Federal courts, sitting as courts of equity, is neither enlarged nor diminished by state legislation" (*Mississippi Mills v. Cohn*, 150 U. S., 202, 204).

(2) "The line of demarcation between equitable and legal remedies in the Federal courts cannot be obliterated by state legislation" (*Hollins v. Brierfield Coal & Iron Co.*, 150 U. S., 371, 378).

(3) The United States Constitution, in its Seventh Amendment, puts the binding restriction upon the Federal courts that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." This Amendment, though not binding state courts, concludes the Federal courts; and the Federal courts cannot deal with rights or remedies save in accordance therewith. As said in *Scott v. Neely*, 140 U. S., 106, 109:

"In the Federal courts this right cannot be dispensed with, except by the assent of the parties entitled to it, nor can it be impaired by any blending with a claim, properly cognizable at law, of a demand for equitable relief in aid of the legal action or during its pendency."

In the present case, Hanssen claims to be a creditor of the Pusey & Jones Company upon certain promissory notes. The Pusey & Jones Company

denies the claim. From time immemorial, that issue typifies the action at law and the right of trial by jury. From time immemorial, also, a court of equity has not undertaken (in the absence of legislation) to deny the right to a jury trial in such case, and has not been persuaded to do so merely because the defendant is said to be insolvent or acting in fraud of creditors. This immemorial law has been embodied in the United States Constitution and no state statute can now give a Federal court of equity extra-constitutional powers.

The test to be used in the application of these principles under the Seventh Amendment is the common law as it existed when the Constitution was adopted. As said in *Mississippi Mills v. Cohn*, 150 U. S., 202, 205:

"The equity jurisdiction conferred on the Federal courts is the same that the High Court of Chancery in England possesses; is subject to neither limitation or restraint by state legislation, and is uniform throughout the different states of the Union."

In conformity with the three principles above outlined it has been repeatedly held by this Court that a Federal court cannot derive any equitable power from a state statute authorizing a simple contract creditor whose claim is disputed and who has no lien to enforce his claim by proceedings in equity.

In *Hollins v. Brierfield Coal & Iron Co.*, 150 U. S., 371 (*supra*), to be sure, no state statute was directly involved; but this Court was merely stating the rule, which it had recently settled in two other cases so closely analogous to ours as to be indistinguishable in principle:

Scott v. Neely, 140 U. S., 106;

Cates v. Allen, 149 U. E., 451.

Scott v. Neely was an action by simple contract creditors who had not reduced their disputed claim to judgment and who had no lien upon the property of the alleged debtor, to subject the property of defendants to the payment of the alleged debt in advance of any proceedings at law. The complainants relied upon Sections 1843 and 1845 of the Code of Mississippi of 1880, which authorized a simple contract creditor to present a creditor's bill to set aside any fraudulent conveyances and devices, and gave such creditor a lien upon the property of the debtor from the time of filing the bill.

By a unanimous Court, Mr. Justice Field writing the opinion, it was held that despite these statutory provisions the Federal courts had no jurisdiction of the suit; and this Court said (p. 113):

"In all cases where a court of equity interferes to aid the enforcement of a remedy at law, there must be an acknowledged debt, or one established by a judgment rendered, accompanied by a right to the appropriation of the property of the debtor for its payment, or, to speak with greater accuracy, there must be, in addition to such acknowledged or established debt, an interest in the property or a lien thereon created by contract or by some distinct legal proceeding."

Cates v. Allen, 149 U. S., 451, *supra*, was a suit under the same statutory provisions of the Mississippi Code. It was originally brought in the State court and was thereafter removed to the Federal court, on the ground of diversity of citi-

zenship. The complainants were simple contract creditors, who had not reduced their claim to judgment but sought to set aside certain fraudulent conveyances. This Court held that the bill could not be maintained in the Federal court; and said (p. 457):

"The existence of judgment, or of judgment and execution, is necessary, first, as adjudicating and definitely establishing the legal demand, and, second, as exhausting the legal remedy."

And again (p. 458):

"The fact that section 1845 aims to create a lien by the filing of the bill does not affect the question, for in order to invoke equity interposition in the United States courts the lien must exist at the time the bill is filed and form its basis, and to allow a lien resulting from the issue of process to constitute such ground would be to permit state legislation to withdraw all actions at law from the one court to the other, and unite legal and equitable claims in the same action, which cannot be allowed in the practice of the courts of the United States, in which *the distinction between law and equity is a matter of substance, and not merely of form and procedure.*"

In conformity with these decisions, the same rule has been applied in a number of cases by various Circuit Courts of Appeals and by other Federal courts, where state statutes of a similar nature have been involved.

*Davidson-Wesson Implement Co., Ltd. v.
Parlin & Orendorff Co. (C. C. A., 5th*

Circuit, 1905), 141 Fed., 37;
Jacobs et al. v. Mexican Sugar Co. (C. C.,
 New Jersey, 1904), 130 Fed., 589;
*Harrison et al. v. Farmers' Loan and Trust
 Company of New York* (C. C. A., 5th
 Circuit, 1899), 94 Fed., 728;
D. A. Tompkins Co. v. Catawba Mills (C.
 C., So. Car., 1897), 82 Fed., 780;
*Morrow Shoe Mfg. Co. v. New England
 Shoe Co.* (C. C. A., 7th Circuit, 1893),
 57 Fed., 685; affirmed on rehearing, 60
 Fed., 341;
Atlanta & F. R. Co. v. Western Ry. Co. (C.
 C. A., 5th Circuit, 1892), 50 Fed., 790;
Matthews Slate Co. v. Matthews, 148 Fed.
 (D. C., Mass.), 490;

III.

Decisions claimed to be contrary, distinguished.

(1) *Darragh v. H. Wetter Mfg. Co.* (C. C. A.,
 8th Cir., 1897), 78 Fed., 7, is easily distinguishable
 upon the grounds:

(a) The corporation expressly consented
 to the appointment of a receiver for purpose
 of liquidation, and did not deny the claim of
 the H. Wetter Manufacturing Company as a
 creditor. Hence there was no common law
 issue as to the corporation's liability to the
 H. Wetter Manufacturing Company.

(b) The Arkansas statute there involved
 was very exceptional; and rendered void any
 common law judgment against the corpora-
 tion if attacked within ninety days. This
 practically repealed the remedy at law and
 deprived a common law judgment of its con-
 clusive, evidentiary character.

(c) The attempt to nullify the appointment

of receivers for the corporation was made by a stockholder thereof in a collateral proceeding. It was held that he had no cause of complaint.

Moreover, the reasoning in that case proceeds upon a clear misconstruction of *Cowley v. Railroad Co.*, *Scott v. Neely* and *Cates v. Allen*. Those cases, Mr. Justice Sanborn says, were decided upon the basis of Section 723 of the Revised Statutes, which provides that

"suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate, and complete remedy may be had at law."

In *Scott v. Neely*, however, the complainant united with his demand for the payment of the alleged debt, "a proceeding to set aside alleged fraudulent conveyances of the defendants." We are unable to perceive how the complainant could have hoped for *any* relief *at law* upon this branch of the case, let alone "plain, adequate and complete" relief. And in *Cates v. Allen*, the bill prayed that an alleged fraudulent assignment of property should be set aside; "for an injunction; for a writ of sequestration; for a receiver; that the filing of the bill be held to give complainants the first lien on the effects of the said debtors in the hands of the assignees, or either of the parties or any other person; and for general relief." Again we are unable to perceive how the decision could possibly have gone against the complainants upon the theory that they had an adequate remedy at law.

Certainly neither one of those decisions by this Court was put upon the ground that the plaintiff

had an adequate remedy at law. The very first paragraph following the statement of facts and the question at issue, in the opinion of Mr. Justice Field in *Scott v. Neely*, shows that *the bases of the decision were the constitutional guaranty that a litigant cannot be deprived of his right to a common law trial of common law issues, and the distinction in the Federal courts between law and equity.*

The mistaken construction attempted to be put by *Darragh v. H. Wetter Manufacturing Co.* upon *Scott v. Neely* and *Cates v. Allen*, was considered at length and rejected in the later case of *Jacobs v. Mexican Sugar Co.* (C. C. New Jersey, 1904), 130 Fed., 589.

(2) The case of *Jones v. Mutual Fidelity Co.* (C. C. Del., 1903), 123 Fed., 506, much relied on by opposing counsel, may be readily distinguished on a number of grounds:

(a) The case came up on demurrer, which necessarily admitted all the allegations of the complaint. Hence, as presented, there was no common law issue as to the defendant's liability to the plaintiff.

(b) The *primary right* asserted by the complainants in that case was *equitable*, not legal. The bill of complaint charged that the complainants had been induced *by the fraud of the defendant corporation* to purchase certain of its certificates of investments and obligations. The complainants, therefore, had an elementary right in equity to be relieved (and they prayed to be relieved) as to this purchase and to "have a lien upon the assets of the said Mutual Fidelity Company for the amounts that they have paid into the said company, and for an accounting and injunction." The case, therefore, is an instance where the complainants had an equitable lien

upon the property of the defendant and were suing for an equitable rescission—which has always been a primary head of equitable jurisdiction.

(c) Finally, the constitutional question was not raised. The hearing was on demurrer, and no denial by the defendant raised any issue of fact to be settled by a jury. A question of such a character is waived if not properly presented. (*Metropolitan Ry. Receivership*, 208 U. S., 90, 109.)

Moreover, the reasoning of the opinion in the *Jones* case is, we submit, unsound, or, at least, inapplicable as regards the present case.

To apply that reasoning to the facts of the present case seems to us merely to play upon the words "rights" and "remedies." Any so-called "equitable right" in the present case is really nothing but an attempted "equitable remedy." It is not substantive but adjectival. It partakes not of the cause of action but of the relief. Hansen's only cause of action is to recover his alleged debt. Pending proof of the debt, he asks a receivership. On its very face that request is, like an attachment, purely incidental to collection of any judgment Hanssen may recover. It is not the assertion of a substantive right. It is merely remedial. The appointment of the receiver neither satisfies nor discharges the debt. It does not even adjudicate finally its existence.

The reasoning and consequences of the *Jones* and *Darragh* cases as applied to a purely legal pecuniary demand were rejected with striking prevision by Mr. Justice Field in *Scott v. Neely*, *supra* (140 U. S., 106, 114):

"Upon the contention of the complainants

it is not perceived why all actions at law, even for injuries to persons or property, may not be withdrawn by the State from a court of law to a court of equity, by allowing a lien upon the property of the defendants on the issue of process at the commencement of the action, and authorizing the court to direct a sale of the whole or a portion thereof, in its discretion, to pay the damages recovered, and to set aside any obstacles to their satisfaction from fraudulent conveyances of the wrongdoer. Whatever control the State may exercise over proceedings in its own courts, such a union of legal and equitable relief in the same action is not allowed in the practise of the Federal courts."

(3) *McGraw v. Mott* (C. C. A., 4th Circuit, 1910), 179 Fed., 616 falls within two well recognized exceptions: (1) Where the defendant has submitted to the jurisdiction of the court, the decree is not open to collateral attack by third parties. (2) Under such a statute as we are considering, a corporate defendant may waive objection to the jurisdiction either in terms or by conduct.

(4) Some of the judges in the cases just cited have suggested that the decisions in the *Scott*, *Cates* and *Hollins* cases, *supra*, are in part or wholly overruled by *Cowley v. Northern Pacific Railroad Co.*, 159 U. S., 569, where it was said that "a party by going into a national court does not lose any right or appropriate remedy of which he might have availed himself in the State courts of the same locality" (p. 583). That case was not a creditor's bill at all, but was merely an action to impeach a state court judgment for fraud. This Court held that, if the proper diversity of citizenship were shown, the suit to impeach could be

maintained in the Federal court quite as properly as in the state court.

Adequate reply to any suggestion that this *Cowley* case overrules the *Cates* and *Hollins* cases has been made by Circuit Judge Lowell in *Mathews Slate Co. v. Mathews*, 148 Fed., 490 (p. 494) :

"Following certain expressions of the Circuit Court of Appeals for the Eighth Circuit in *Darragh v. Wetter Mfg. Co.*, the defendant urges that *Cates v. Allen* has been questioned and, in effect, overruled. I can find no trace of this. *The case has often been cited by the Supreme Court, always with approval, never with doubt.* The authority of *Darragh v. Wetter Mfg. Co.*, and the cases which have followed it in the same court, is thus considerably weakened, indeed, as being based upon a misconception of *Cates v. Allen.*"

The theory that a party has nothing to lose by his choice of tribunals is a merely general expression, to which, as every judge and lawyer knows, there are many exceptions. Indeed, this case comes squarely within the restrictions on this very principle as declared by this Court in *Louisville & N. R. R. Co. v. Western Union Tel. Co.*, 234 U. S., 369, 376.

The judges in many inferior courts have not interpreted the *Cowley* case, as overruling the *Scott*, *Cates* and *Hollins* cases. See the opinions in *Gillespie v. Riggs* (C. C. A., 4th Cir., 1918), 253 Fed., 943; *Davis v. Hayden* (C. C. A., 4th Cir.), 238 Fed., 734; *Mathews Slate Co. v. Mathews*, 148 Fed., 490; *Continental Trust Co. v. Toledo, St. L. & K. C. R. Co.*, 82 Fed., 642, 661 (opinion by Mr. Chief Justice Taft, then a Circuit Judge), and a score of other cases.

SECOND POINT.

The orders below rest on an interpretation of the Delaware Statute, which purports to enlarge the jurisdiction of the Federal Court in equity and to empower it to determine an ordinary common law claim under the guise of merely supplying an auxiliary remedy in equity. That interpretation obliterates the line of demarcation in the Federal courts between common law and equitable causes and deprives the defendant of its constitutional right to a jury trial under the Seventh Amendment to the United States Constitution.

In *Grand Chute v. Winegar*, 15 Wall., 373, Mr. Justice Hunt, in delivering the opinion of the Court, said (p. 375):

"The right to a trial by jury is a great constitutional right, and it is only in exceptional cases and for specified causes that a party may be deprived of it."

The application of the Delaware statute, if applicable at all, must be on one of three possible theories, viz.: (1) That it merely adds an equitable remedy in aid of a common law cause of action; (2) that it enlarges the jurisdiction of the Federal court in equity; or (3) that it confers visitorial power over corporations upon "the Chancellor."

We submit that, on none of these theories, can the statute be utilized as it has been utilized in the courts below.

I.

If the statute be interpreted as merely providing an equitable remedy in aid of a legal cause of action, the application made of it below is clearly improper in a Federal court, since it deprived the defendant of its constitutional right to trial by a jury and obliterated the distinction in Federal courts between common law and equitable causes of action.

Hanssen has, at most, merely a disputed pecuniary demand upon certain promissory notes. The right and the issue thereon are typical of the common law case, triable from time immemorial by a jury. Hanssen had no equitable cause of action as such. His right, if any, was a right to payment of the notes. That was the foundation of his case. He could have maintained no suit in equity to enforce the payment of the notes. If, therefore, the statute be interpreted as adding an equitable remedy to the legal remedy and as allowing the equitable remedy to be pursued to the exclusion of the legal remedy without any prior trial of the legal cause of action and the issues therein involved, obviously the defendant is cut off in the Federal court from its constitutional right of trial by jury, and a way has been found to convert all legal causes of action into equitable causes of action merely by providing a new and additional equitable remedy.

Nor can the result be changed by calling the new remedy a new right. The fact remains that, whatever name is used, the proceeding is essentially ancillary and remedial,—adjectival rather than substantive.

In the courts below, however, the application of the Delaware statute has rather been rested on an interpretation of it as enlarging the jurisdiction of the court of equity.

No one disputes that as a general proposition a State may create new rights and prescribe the remedies in enforcing them; and that, if those rights are of an equitable character and within the general class of rights administered in equity, the Federal courts may enforce them in equity.

But this does not mean that any State can, in addition to creating a new right, enlarge the jurisdiction of a Federal court of equity, or by giving a so-called new right to a plaintiff, deprive a defendant of his rights in a Federal court as preserved by the Constitution of the United States. Much less does it mean that a State can by fiat convert a legal cause of action into an equitable cause of action and thereby abolish the statutory distinctions in Federal courts with respect to substance and procedure between common law and equitable causes.

In *Thompson v. Railroad Cos.*, 6 Wall., 134, it was said, in reversing a decree in equity for want of jurisdiction (p. 137):

"Thus, an action at law, which sought solely to recover damages for a breach of contract, was transmuted into a suit in equity, and the defendant deprived of the constitutional privilege of trial by jury."

Furthermore, the peculiar features of this Delaware statute stamp it as a most remarkable enlargement of jurisdiction.

The statute reads as if it were a mere introduc-

tion to further provisions looking to a liquidation; but the statute proceeds no further than this introduction. It provides for neither suit, notice, process, trial nor judgment. It authorizes the Chancellor, not by suit but upon mere personal application to him, to appoint receivers to take "charge of the estate, effects, business and affairs" of the corporation, to collect its debts, to prosecute and defend actions, to appoint managing agents, "and to do all other acts which might be done by such corporation, and may be necessary and proper." Such receivership is to be continued "so long as the Chancellor shall think necessary." To what end the receivership shall be conducted, or what shall be ultimately done with the corporation and its affairs, is not stated. Apparently the mere appointment of receivers and the subsequent unlimited management of the corporation by the receivers in substitution for the board of directors is the end contemplated. Executive rather than judicial power is involved. (See Subdivision III, p. 28 *post*.) Receivers may be appointed "*pendente lite*," but there is no *lis pendens*. The outcome is merely whatever "the Chancellor shall think necessary." The conception of a cause of action as a means of securing an adjudication of rights alleged to have been invaded, is not followed.

Such a statute, if the proceeding be deemed judicial and not administrative, is necessarily an enlargement of jurisdiction—an enlargement for which no parallel in legislation can be found.

Judge Morris has himself admitted in *Adler v. Campeche Laguna Corporation*, 257 Fed., 789, 791, that "the Delaware statute enlarges the jurisdiction of the Court of Chancery."

As illustrating the settled judicial opinion that state statutes of a similar character are *enlargements of equitable jurisdiction rather than of recognized equitable rights and hence are not applicable in the Federal courts*, we may cite the interpretation given by Circuit Judge Lowell in *Mathews Slate Co. v. Mathews*, 148 Fed., 490, to a Massachusetts statute authorizing the state courts to entertain in equity

"suits by creditors to reach and apply, in payment of a debt, any property, right, title or interest, legal or equitable, of a debtor, within or without this commonwealth, which cannot be reached to be attached or taken on execution in an action at law."

Obviously this statute did not go as far as the Delaware statute because it did not provide for the unlimited substitution of a chancellor for the board of directors; and because the state courts had interpreted the statute as leaving the defendant his right of jury trial notwithstanding that it contemplated a proceeding in equity. Nevertheless, Judge Lowell held that the statute was inapplicable in a Federal court to the case of a common-law creditor whose claim was disputed and not reduced to judgment, and in a remarkably well-reasoned opinion said (p. 495):

"But the decision of the Supreme Court in *Cates v. Allen*, and in other cases above referred to, was not rested wholly upon the unconstitutionality of the statutory proceeding. Moreover, to permit the complainant to proceed here in equity, while the defendant retains a right to jury trial, not merely for the trial of issues framed by the court, but in general as guaranteed by the Constitution,

would so disarrange federal procedure in equity as to leave it at the mercy of any state statute which does not contravene the seventh amendment."

Other decisions holding that state statutes of this character are enlargements of equitable jurisdiction rather than of recognized equitable rights and hence are inapplicable in Federal courts, may readily be multiplied:

Morrow Shoe Mfg. Co. v. New England Shoe Co., 60 Fed. (C. C. A.), 341, 342;

D. A. Tompkins Co. v. Catawba Mills, 82 Fed., 780, 783;

Atlanta & F. R. Co. v. Western Ry. Co., 50 Fed., C. C. A., 790, 795.

III.

A third possible interpretation of the Delaware statute is: That what it provides is visitorial or supervisory power by the State over corporations through the Chancellor of the State.

For generations visitorial powers have been exercised in English law by the Chancellor under the common law, and the Chancellor was the natural repository of visitorial powers. Under the Constitution of Delaware the Chancellor is a high officer of State, in whom by express provision of the Constitution may be vested "all the powers which any law of this State vests in the Chancellor, besides the general powers of the court of chancery." (Article IV, Sec. 21.)

The Delaware statute now relied upon by Hansen does not confer the power to appoint a receiver on the court of chancery, but on the Chancellor. It

does not provide for a bill in equity in the court of chancery, but for an application to the Chancellor. If an application were made to him by a stockholder or creditor of the corporation, not by bill in equity, not even by a formal petition entitled in the court of chancery, he would, nevertheless, by the very terms of the statute, be called upon to entertain and dispose of the application. It makes no provision for process, notice, trial or judgment. It presents the whole matter as one personal to the Chancellor. It mentions no court. It does not even provide that the corporation be heard. No requirement for liquidation and no method of liquidation are stated. No final judgment is required.

Moreover, the statute contains no provision for review of any action by the Chancellor, and it contemplates placing him in the position of sole manager and director of the corporation for such period of time as in his uncontrolled discretion he may think proper.

The very fact that, under this statute, the application may be made solely by a stockholder, shows that the statute contemplates a visitorial rather than a judicial power, for a stockholder of an insolvent corporation can gain nothing by its liquidation.

Hence, we submit, an application under this statute is one to the visitorial power, and the relief contemplated is visitorial and executive.

It is true that there are some dicta by the Chancellor in the case of *Whitmer v. Whitmer*, 11 Delaware Chancery Reports, 185, to the effect that the proceeding is one in equity; but the point whether the Chancellor was exercising visitorial power or judicial power was not before him, and could not

have been raised in the case, so that his statement was pure dictum. In fact, the only way this question could be raised before the Chancellor of Delaware would be by a discussion of the question whether a particular application, not made in the form of a bill in equity or of a petition in equity, could be entertained by him. We do not understand that there has ever been a decision that it could not.

On the other hand, there have been very numerous decisions during the past twenty years which sustain the theory that this is an exercise of visitorial power. It is familiar law that the insolvency statutes of the various States were superseded by the passage of the Bankruptcy Act of 1897, and that insolvency proceedings could no longer be maintained under State insolvency acts after the adoption of the Bankruptcy Act (*Closser v. Strawn*, 227 Fed., 139).

Nevertheless, the Delaware Chancellor has gone on year after year ever since the passage of the Bankruptcy Act, appointing receivers of Delaware corporations under this section of the Delaware statutes. Every such decision, therefore, is sustainable only as an exercise of visitorial power.

Such powers are not exercisable by the United States District Courts, which cannot be vested with the executive or administrative powers of state officers, but only with judicial powers. (See U. S. Constitution, Sec. 8, Subd. 9 of Art. I, and Sec. 1 of Art. III.)

The mere fact that in all reported instances the Delaware courts have, under this statute, proceeded by way of a bill in equity, is no argument in favor of the constitutionality of the act as applied to the Federal court. As said in *12 Corpus Juris*, 786:

"Whether or not a particular statute is constitutional is a matter of law, and must be tested, not by what has been done under it, but by what the law authorizes to be done under its provisions."

The right of The Pusey & Jones Company to its business and the free conduct thereof is a property right. (*Truax v. Corrigan*, U. S. Supreme Court Advance Opinions, Jan. 16, 1922, 132, 136; *Duplex Printing Press Co. v. Deering*, 254 U. S., 443, 465.) Consequently, no State can by statute withdraw the protection of due process of law from such property—much less authorize its seizure by a State or Federal court without due process of law, notice, hearing and judgment. (*Hovey v. Elliott*, 167 U. S., 409; *Truax v. Corrigan*, U. S. Supreme Court Advance Opinions, Jan. 16, 1922, 132, 137.)

Unless sustainable as an exercise of the power of visitation reserved by the State, this Delaware statute is clearly unconstitutional. But, if sustained on that theory, the power is one that no Federal court can exercise in place of the officer of the State to whom such visitorial powers are entrusted. Under the distribution of governmental powers and functions made by the United States Constitution, a Federal court cannot be burdened with such executive and administrative powers.

THIRD POINT.

The Delaware Statute has never been construed, except in the decisions below, as authorizing a simple contract claimant whose claim is disputed by answer demanding a jury trial and who has no legal or equitable lien on the property of the corporation, to institute a creditor's bill under the statute.

Legislation, which in general terms authorizes a creditor of a corporation to institute a creditor's bill and which does not expressly indicate an intention to include simple contract creditors, is invariably, so far as we can ascertain, construed to refer only to judgment and lien creditors.

In 15 *Corpus Juris*, p. 1373, with reference to the use of the word "creditor" in general statutes authorizing a creditor's bills to set aside a fraudulent conveyance or to enforce claims against equitable assets, etc., the rule is thus stated:

"Thus the term ('creditor') has been held frequently not to include creditors at large, but to be confined to judgment creditors and those who have in some manner effected a lien on the debtor's property. It is in this sense that the word is used in certain statutes governing procedure and relief."

An illustration may be found in Section 91 of the General Corporations Law of the State of New York which expressly authorizes such an action to be brought "by a creditor of the corporation." The courts of New York have invariably construed the word "creditor" as here used to mean "judgment creditor."

Steel v. Isman, 161 App. Div., N. Y., 146;
Moe v. Thomas McNally Co., 138 App.
 Div., N. Y., 480;

Swan v. Mutual Reserve Fund Life Assn.,
 20 App. Div., 255 (aff'd 155 N. Y., 9).

Corpus Juris, Vol. 15, page 1389, lists as the "few states" which have by statute authorized the filing of creditor's bills without first recovering a judgment: Connecticut, Louisiana and Massachusetts. Even in Massachusetts it is held that the statute, though providing for proceedings in equity, must be construed so as to leave to the defendant his right of jury trial.

Powers v. Raymond, 137 Mass., 483;

Mathews Slate Co. v. Mathews, 148 Fed.,
 490, 494.

As we have already pointed out, right to a jury trial or to have a cause tried in a particular forum may be waived (*Metropolitan Railway Receivership*, 208 U. S., 90, 109).

In the light of these principles we have examined the Delaware decisions and are unable to find any which parallel the construction of the statute adopted in the courts below. In all of them one or more of the vitally distinguishing circumstances appear: either the point was not raised; or the claim of the plaintiff stood admitted on the record in whole or in part; or the claimant had a specific legal or equitable lien on the property of the corporation; or the primary right which he was seeking to enforce was equitable. We find no decision in Delaware holding that a simple contract claimant can, in the absence of these circumstances, maintain an action under the Delaware statute in question; and we find no Delaware decision over-

ruling the right of a defendant who makes timely demand therefor to have the common law issues as to the contract liability tried in a common law action before a common law jury.

Merely piling up Delaware decisions in which the Delaware statute has been the successful basis of a creditor's bill means nothing. The facts and circumstances of each case must be examined; and it must always be borne in mind that, as stated in 15 *Corpus Juris*, page 1390:

"If complainant's demand is of a purely equitable nature, recognizable only by a court of equity, he need not first establish it in an independent suit, but may do so in the creditor's suit to reach the equitable assets of the debtor."

In *Sill v. Kentucky Coal & Timber Development Company*, 11 Del. Ch., 93—the only Delaware decision cited on this subject in the opinions below—the allegations of the bill that the complainant was a creditor of the company were expressly admitted in the original answer of the defendant company, and were not denied in the amended answer; but the claim was made that because the complainant was not a judgment creditor he was not entitled to ask for a receiver. The Chancellor merely held "that it is not necessary that the complainant be a judgment creditor." No demand for a jury trial was made, and the constitutional question was not raised. Indeed, since the plaintiff's status as a creditor was admitted, there was no issue on that score to try. As said in 15 *Corpus Juris*, page 1390, on the authority of *Scott v. Neely*, 130 U. S., 106, and other Federal cases, "the admission or acknowledgment of the debt is equiva-

lent, for the purposes of the creditor's bill, to its establishment by a judgment."

The general rule that a Federal court is bound by the construction given a state statute by the state courts has the important qualifications that neither decisions of inferior state courts nor mere *dicta* of the state courts of last resort are controlling. The Federal courts are not bound to follow a construction of a state statute "based upon mere implication from the language of a judicial opinion" of a state court. (25 *Corpus Juris*, p. 811.)

Under these circumstances, we respectfully submit that the Delaware statute, even if constitutional and applicable in a Federal court of equity, has been wholly misconstrued by the courts below; and that it should be construed by this Court as in no wise subverting the defendant's right to a common law trial of a common law issue as to its liability on these notes.

FOURTH POINT.

The bill of complaint prays for no final relief whatever with respect to Hanssen's alleged rights as a creditor. The Federal Court, therefore, was without jurisdiction to appoint receivers for the assumed protection of his rights as a creditor; and any interpretation of the Delaware Statute which would authorize it to appoint receivers on such a bill and for such a purpose would clearly work an enlargement of the jurisdiction of the Federal Court and hence not be permissible.

The bill prays three kinds of relief: (1) for the appointment of temporary receivers; (2) for a decree directing the Pusey & Jones Company to execute and deliver to Hanssen a certificate for the shares of stock pledged by Christoffer Hannevig with Hanssen's principals; and (3) for a direction to the receivers to take steps immediately to have vacated and set aside the judgment in favor of the Baltimore Dry Docks & Shipbuilding Company, alleged to have been collusively suffered by the Pusey & Jones Company.

It is apparent upon mere inspection of the bill that *no final relief whatsoever is prayed for with respect to Hanssen's alleged rights as a creditor.* There is no prayer for judgment upon the alleged claim. There is no demand that the claim be impressed upon the Company's property as a lien, or that its property be sold to provide means of payment.

The prayer for a decree that the Pusey & Jones Company execute and deliver to Hanssen certain stock certificates has nothing to do with the satis-

faction of Hanssen's claim as a creditor or with the ground of jurisdiction on which the courts below have predicated their decree. Moreover, the suit purports to be a representative suit brought on behalf of all creditors and stockholders similarly situated (Rec., p. 6), whereas this prayer is entirely foreign to a representative suit and looks to an individual right which Hanssen asserts against the Company, not for its dissolution or liquidation but for recognition of his personal status as a stockholder. Furthermore, this prayer is not a prayer for any final relief to which any receivership is proper ancillary relief or necessary. If the Company has unlawfully refused to issue to Hanssen a certificate of stock, he has a perfectly adequate remedy; and no receiver is necessary to aid him in that regard.

So, likewise, as to the prayer that the receivers be instructed to commence suit to set aside the judgment obtained by the Baltimore Dry Docks Company. That is not a prayer for any final relief. It runs merely to an incident of the receivership. It does not ask that the alleged collusory judgment be nullified.

That such a bill does not confer jurisdiction upon a court of equity to appoint receivers is too clear for serious question. This for three reasons:

(1) The appointment of a receiver, in the absence of consent, is merely auxiliary and never the ultimate object of a suit in equity.

(2) Such an appointment can be made only in a pending suit in which the main relief is independent of the receivership.

(3) The pending suit must be one for such relief as could be litigated between the parties even if the application for a receivership were denied.

Courts and text writers agree that the remedy of receivership

"is a provisional or auxiliary one, invoked as an adjunct or aid of the principal relief sought by the action *and never as the ultimate object of that action*. The court must have jurisdiction independent of the receivership and a receiver is never appointed except as a measure in aid of the enforcement of some recognized equitable right." (High on Receivers, 4th Ed., p. 10, §6.)

To the same effect are:

- 4 *Pomeroy's Eq. Jur.* (4th Ed.), p. 3375, Sec. 1423; and p. 3513, Sec. 1492;
- 1 *Tardy's Smith on Receivers* (2nd Ed.), p. 17, Sec. 4.

In *Tardy's Smith* (p. 51, §14) there is this statement:

"The pending action must be one for such relief as can be litigated between the parties even if the application for the appointment be denied. Hence if the sole object of the suit is the appointment of a receiver, the court will not take jurisdiction in the absence of statutory provisions allowing such suits."

Uncommonly in point is *Zuber v. Micmac Gold Mining Co.*, 180 Fed., 625. There the bill alleged gross mismanagement of the defendant corporation, and asked that receivers be appointed to manage its property and to bring suit against another mining company, its officers and stockholders, for the purpose of recovering fraudulently issued stock. It prayed an injunction against the Micmac Gold Mining Company from transacting any further business. The bill did not pray for a cancellation of the contract alleged to be fraudulent,

nor for the winding up of the corporation. The Court held (p. 627):

"In the case at bar there is no final relief asked for in the bill. *A receivership cannot be held by this court to be final relief; and it cannot be made final by the suggestion that the receivers may bring suits, and in that way obtain some ultimate relief.* The purpose of a receivership in equity is to be ancillary to, and in aid of, the primary object of the litigation. It cannot be the primary object of the litigation. The final relief sought by the bill cannot be made contingent upon the incidental relief of a receivership."

Important additional authorities are:

Bricton Mfg. Co. v. Close, 280 Fed. (C. C. A., 8th Cir.), 297;

De Rees v. Costaguta, 275 Fed. (C. C. A., 2nd Cir.), 172, 175; appeal dismissed, 251 U. S., 166;

Hutchinson v. American Palace Car Co., 101 Fed., 182, 185;

Gutterson & Gould v. Lebanon Iron & Steel Co., 151 Fed., 72;

In re Brant, 96 Fed., 257;

Robinson v. W. Va. Loan Co., 90 Fed., 770;

McLean v. Lafayette Bank, 16 Fed. Cas. No. 8887.

In *Norris v. New York, N. H. & H. R. R. Co.* (a decision by Circuit Judge Manton, rendered May 23, 1919, and apparently not reported), Judge Manton said:

"The purpose of a receivership in equity is ancillary to or in aid of the primary object of the litigation. The appointment of a receiver cannot be the primary object of the litigation, and so the final relief sought by a

bill in equity cannot be made contingent upon the incidental relief of a receivership."

The prayer that the receivers be directed to bring suit does not give the Court jurisdiction.

As a matter of fact, the order below did not even *direct* the receivers to do anything. It merely (Record, p. 80):

"authorized and empowered to take such action or proceedings . . . as they may deem proper or as they may be advised."

Peculiarly in point, therefore, is the ruling in *Zuber v. Micmac Gold Mining Co.*, 180 Fed., 625, that a receivership is not final relief (p. 627):

"and it cannot be made final by the suggestion that the receivers may bring suits, and in that way obtain some ultimate relief."

To the same effect are:

Clark v. National Linseed Co., 105 Fed. (C. C. A., 7th Cir.), 787, 794;

Adler v. Seaman, 266 Fed. (C. C. A., 8th Cir.), 828, 839;

Hutchinson v. American Palace Car Co., 104 Fed., 182;

Burnes v. City of Atchison, 48 Kans., 507.

In the so-called "railway cases" the bill was brought by a lien or judgment creditor, or the plaintiff's status as a creditor was admitted. Generally, in *omnibus* suits, the decree rests on the fact that it was consented to.

Of course a state statute cannot so enlarge the jurisdiction of a Federal court in equity as to empower it to entertain a bill looking to the mere appointment of a receiver, unless in addition a special ground of equitable cognizance exists. *Alderson v. Dole*, 74 Fed. (C. C. A., 1st Cir.), 29, citing *Van Norden v. Morton*, 99 U. S., 378, and *Wehrman v. Conklin*, 155 U. S., 314.

FIFTH POINT.

As to Hanssen's claim to be a creditor, the only question now relevant is whether the courts below were right in holding that the issues involved in this claim must, over the defendant's protest, be tried by the Federal court in equity.

But, in any event, Hanssen clearly did not sustain the burden of proving that he was a creditor of the company. The contrary appeared.

I.

In order to reverse the decision below, it is not necessary now to prove that Hanssen was not a creditor of the company. It is enough to show that the courts below were wrong in their determination that that issue should ultimately be tried and adjudicated, over the company's protest, by the Federal court in equity, *i. e.*, that that court had jurisdiction.

The courts below have not *thus far tried*, or entered judgment upon, the issues as to the defendant's liability upon the notes. The ruling thus far is made solely on affidavits and is merely (in the words of Judge Morris)

"that the complainant will probably be able to establish at final hearing that he is a creditor of the respondent company" (Rec., p. 523).

The defendant's answer expressly denies that Hanssen is a creditor "in any sum or amount whatsoever"; denies that he is the owner of the notes; denies that there is any sum due upon them; denies the evidentiary matter set up in the bill to

show that Hanssen is a creditor; and denies each and all of the claims and equities asserted by Hanssen (Rec., p. 140, *et seq.*).

Various claims of the company against Hannevig, the assignor of the notes, which claims were due and payable before the delivery of the notes to Hanssen's custody and exceed the amount of the notes, were pleaded as offsets; and the answer further set forth by way of defense that the notes were held by Hannevig and transferred by him to Hanssen's custody only after maturity and only for purposes of collateral security (Rec., pp. 140, *et seq.*).

These denials, allegations and offsets raise issues which can finally be determined in due course of law by judgment after trial, and as to which, we claim, the company was entitled to a common law trial (Rec., pp. 147-8).

II.

But Hanssen has not sustained the burden of showing satisfactory probability for his claim to be a creditor. Much less has he proved that he is one.

In order to establish that Hanssen was a creditor of the corporation, he was bound to prove (1) that he was personally entitled to sue on the notes which he held; (2) that the notes were then due and payable, and (3) that the company had no valid defense to the payment thereof.

Hanssen failed to sustain the burden of proof on any one of these points.

On the first point, the notes were deposited by Hannevig with Hanssen under the same contract conditions as the deposit of the stock, and he had no more title to them than he had to the stock.

(See the circumstances stated in the next Point, p. 53.)

These notes were eight in number, all drawn to the order of Christoffer Hannevig, Inc., and signed by the Pusey & Jones Company, with one exception where the note was drawn to the order of Christoffer Hannevig. They were all indorsed on the back with the following notation (Rec., pp. 34-41) :

"Extended according to letter dated September 18, 1917, to United States Shipping Board Emergency Fleet Corporation."

This notation in each case was signed by the payee of the note. They were then again indorsed with the signature of the payee (Rec., pp. 33-41). The terms of this agreement of postponement were assented to by Hannevig and by Hannevig, Inc. (Res., pp. 403, 446-7).

We need not repeat the argument, which is set forth in the next Point (p. 53) in connection with the stock certificates, showing that complainant was at best a mere custodian of these notes under the agreement of February 13, 1920 (Rec., p. 489). Nor need we again repeat the arguments in that Point to the effect that there was no authority conferred upon Hanssen in the power of attorney which he held to hold these notes as pledgee or to bring suit on them against the corporation (Rec., p. 495). He was a mere custodian of the notes as things held in possession. He was authorized to make them a part of his negotiations, but he was in no way authorized to bring suit upon them against a third party to the transaction.

In point of fact, it is obvious that under the terms of the paper under which the notes were

delivered to Karluf Hanssen (Rec., p. 489), no suit whatever could be brought upon them by any party exercising rights under the terms of that paper. The paper provided that Christoffer Hannevig reserved to himself the right that "the deposited security," which included the notes, should be delivered to him and could be disposed of by him at any time, provided he paid his obligations to the nine ship-contract owners in certain kinds of currency. This reservation took away from the Norwegian ship-contract owners, not to mention Karluf Hanssen, any right at all to sue upon the notes, or to endeavor to collect the same as if they were the holders of this negotiable paper. They merely held this paper. It was impossible for Hannevig to negotiate it or sell it without a payment satisfactory to them of the indebtedness which he owed them; but they themselves were not authorized to negotiate the paper or collect upon it.

Karluf Hanssen's position was, of course, still further removed from any rights in these instruments, since he was merely holding this paper as a custodian for the nine ship-contract owners. He, therefore, could have no status as a creditor, even if the paper were then due and payable, and even if there had been no defense to the notes which the Pusey and Jones Company could properly set up.

The Courts below held that the endorsement of a note to an agent transfers to him title thereto as against all parties except his principal.

As to the latter point, we are of opinion that when a note endorsed in blank is delivered along with a collateral instrument specifying that it is delivered merely as collateral to the claim of a third

party, the mere manual recipient does not acquire title. The written instrument controls the character of the manual delivery. Manual delivery to the individual is only effective to transfer title to him when so intended; and when the intention is not to transfer the title to him, but to give security to third parties and this is stated in a collateral instrument handed over at the same time, the manual recipient does not acquire any title by the delivery.

III.

There is a still further objection which it is submitted is decisive on this point. Before the transfer of the notes, they were endorsed with a modification of maturity which referred to the terms of an outside instrument; and the invariable rule is that such an endorsement deprives the paper of negotiability. This endorsement referred to a letter written September 18, 1917, to the effect that the due date of the notes should be extended until the completion of the last eight ships then under process of construction in the Wilmington yard. The last ship of the vessels specified was actually completed about the first day of August, 1919 (Rec., p. 369). Therefore, when the notes were turned over to the custody of the complainant in February of 1920, they were overdue, and in addition, were non-negotiable, since their terms were modified by an outside agreement existing between the parties.

But though these notes were overdue, collection thereof had been postponed by an express agreement between the parties. This agreement postponed payment of the \$650,000 in notes until the

entire amount of the mortgage loan made by the United States Shipping Board Emergency Fleet Corporation and the Pusey & Jones Company had been paid, together with interest thereon. This is the provision set forth in Paragraph 22 of the agreement made May 14, 1918, between the Shipping Board and the Pusey & Jones Company (Rec., p. 228). This extension of collection was assented to in writing by Christoffer Hannevig, Inc., and Christoffer Hannevig, the payees and holder of the notes at that time (Rec., pp. 403-5).

There was no dispute of the above facts. Hence it is demonstrated Hanssen had acquired possession of these notes as overdue paper. He could, therefore, under no circumstances, be regarded as a creditor of the Pusey & Jones Company. He could not sue as a creditor of the company until he was entitled to demand payment of the notes; and at that date the company might be well able to pay him, and his position as a creditor would then have vanished.

There is no rule which permits merely a *prospective, common-law creditor* to present a creditor's bill and secure a receiver when his debt is not payable and may be paid and cancelled before it became collectible at law.

That Karluf Hanssen had full knowledge of this postponement of the payability of the notes, is manifest from the facts set forth in the affidavit of James B. Simpson (Rec., p. 418, *et seq.*). But his knowledge would be immaterial, since he took the paper after maturity and consequently was bound by all the equities which existed between the original parties thereto.

IV.

Furthermore, the Pusey & Jones Company had an off-set against these notes in the hands of Hanssen as assignee of Hannevig, which off-set exceeded the amount of the notes. Hanssen, therefore, was not a creditor.

On February 11th, 1920, the Baltimore Dry Docks & Shipbuilding Company deposited \$750,000 with Hannevig as President of the Pusey & Jones Company as earnest money on its purchase of the latter's Gloucester plant. Hannevig immediately deposited the money in his private banking house and appropriated it to his own uses (Rec., pp. 375, 412). Thereafter, the Pusey & Jones Company was unable to comply with the contract of purchase, and the Baltimore Dry Docks Company recovered judgment against it for the \$750,000 deposited, with interest.

This \$750,000 never reached the treasury of the Pusey & Jones Company; and from February 11, 1920, that Company had a cause of action against Hannevig for its misappropriation. This cause of action antedated the agreement of February 13, 1920, under which Hannevig delivered the notes to Hanssen (Rec., pp. 485, 489).

Had Hannevig sued on the notes, the cause of action for the misappropriation above described would have been a valid set-off. Does Hanssen stand in a better position?

We claim that Hanssen took the notes subject to the equitable defenses which the Pusey & Jones Company could have asserted against Hannevig; and that these defenses operated to overbalance the claim upon the notes. This is true, we claim, for a number of reasons.

(1) The contract between Hannevig and Hansen was made in New York (Rec., pp. 485, 489); and under the New York statute and decisions such an off-set against the assignor is also available against an assignee not a holder for value, without notice and in due course. Hence Hansen took the paper subject to such defenses thereto as were allowed by the law of New York.

The rights and obligations of the parties to a transfer of negotiable paper are determined by the law of the place where the transfer is made (*Amisnick v. Rogers*, 189 N. Y., 252). Hence, in the present instance, the New York law must determine whether the transfer passed the notes free from set-offs or not.

Pritchard v. Norton, 106 U. S., 124, established that

"whatever goes to the substance of the obligation and affects the rights of the parties, as growing out of the contract itself, or inhering in it or attaching to it, is governed by the law of the contract."

In this same opinion this Court adopted the rule laid down by *Story's Conflict of Laws*, Section 332:

"If by the law of the place of a contract, equitable defenses are allowed in favor of the maker of a negotiable note, any subsequent endorsement will not change his rights in regard to the holder. The latter must take it *cum onere*. *Evans v. Gray*, 12 Mart. (La.), 475; *Ory v. Winter*, 4 Mart. n. s. (La.), 277; *Charters v. Cairnes*, *id.*, 1."

In *Northwestern Mutual Life Insurance Company v. McCue*, 223 U. S., 234, it was held (p. 246):

"The obligation of a contract undoubtedly

depends upon the law under which it is made."

Directly in point is *Creston National Bank v. Salmon*, 117 Mo. App., 506, which followed and adopted the principle laid down in *Pritchard v. Norton*, *supra*. The contention there advanced was that matter of defense guaranteed by the *lex loci contractus* ran to the remedy rather than to the nature of the obligation and that therefore the *lex fori* was controlling; but the court held otherwise and followed *Pritchard v. Norton*, saying (p. 513):

"Where the statute where the contract is made and to be performed operates to extinguish the contract or debt itself, the case no longer falls within the law in respect to the remedy, and when such a contract is sued upon in another state, the *lex loci contractus* and not the *lex fori* is to govern."

The situation with respect to the Pusey & Jones notes is directly covered by this doctrine.

Section 267 of the Civil Practice Act of New York (formerly Sec. 502 of the Code of Civil Procedure) provides:

"If the action is upon a negotiable promissory note or bill of exchange which has been assigned to the plaintiff after it became due, a demand existing against a person who assigned or transferred it after it became due *must* be allowed as a counterclaim to the amount of the plaintiff's demand if it might have been so allowed against the assignor while the note or bill belonged to him."

The mandate of this statute has always been observed by the state courts.

Woods v. Sizer, 102 Misc. (N. Y.), 453
455;

Hunter v. Fiss, 92 App. Div., 164;
Czerney v. Haas, 144 App. Div., 430;
Tierney v. The Peerless Shoe Co., 33 Misc.,
 803, 804;
Roldan v. Power, 14 Misc., 480.

The court below refused to apply the New York rule on the ground (Rec., p. 649) that it was "an exception" to the general rule which permitted as offsets merely such equities or defenses as attached to the paper itself. But the New York rule is none the less controlling as the law of the place of the contract.

(2) Even the application of the technical common law rule that only claims existing against the paper itself may be set off against the transferee of overdue negotiable paper, is hedged about with limitations which the courts below failed to appreciate and apply.

Only in the hands of one who takes the commercial paper after maturity *as the absolute owner for value* do the defenses against the prior holder fail to attach under the technical common law rule. Where, however, the commercial paper is assigned as collateral, as in this case, even those jurisdictions which apply the technical doctrine recognize that claims against the assignor are valid defenses in a suit upon paper in the hands of a pledgee.

Janness v. Bean, 10 N. H., 656.

Surely a mere pledgee can stand in no better position than his pledgor. He is suing for the benefit not only of himself but of the pledgor; and the pledgor is the beneficial owner of the proceeds of the suit subject only to the pledge.

(3) Furthermore, the complainant is asserting his alleged rights in a court of equity. The afore-said technical rule against set-offs grew out of the niceties of common law pleading. It never obtained in equity where the principle of off-set in such cases has always been recognized. By suing in equity Hanssen has waived the technical common law rule. Particularly in cases where the assignor of overdue negotiable paper is insolvent, equity will take cognizance of claims which might have been asserted against the assignor. The Pusey & Jones Company is especially entitled to the protection of courts of equity against any claimant who holds under the bankrupt Hannevig and asserts the insolvency of the Pusey & Jones Company as a result of the judgment which has been taken against it by the Baltimore Dry Docks Company as a consequence of Hannevig's misappropriation of the \$750,000 payment involved in that transaction.

Defenses existing against the person of an insolvent assignor were allowed by this Court in *Rolling Mill v. Ore & Steel Co.*, 152 U. S., 596. This Court held (p. 616):

"By the decided weight of authority it is settled that the insolvency of the party against whom the set off is claimed is a sufficient ground for equitable interference."

In New York, courts of equity have long held to this doctrine. In *Davidson v. Alfaro*, 80 N. Y., 660, the New York Court of Appeals held, in a *per curiam* adoption of the decision below, page 662:

"It is a rule in equity, on bill filed therefor, that cross-demands, though unliquidated by judgment, will be set off against each other and if, from the situation of the parties, justice

cannot otherwise be done; and the insolvency of one of the parties is a sufficient ground for the allowance of a set off in equity, even if not within the statute of set offs."

To the same effect are:

Leeds v. Marine Ins. Co., 6 Wheat, 565;

Lindsey v. Jackson, 2 Paige, 581;

Smith v. Felton, 43 N. Y., 419;

Dubreuil v. Gaither, 98 Me., 541;

Garner v. Price, 4 Kulp., 10;

Blake v. Langdon, 19 Vt., 485;

Hobbs v. Duff, 23 Cal., 596.

SIXTH POINT.

The plaintiff's alleged status as a stockholder has not been considered in the courts below to be, and is not, sufficient ground of jurisdiction. Consequently, the question as to his status as a stockholder is not here as a question of law for determination.

(1) In the District Court Judge Morris said of Hanssen's claim to be a stockholder (Rec., p. 521):

"It appearing that the complainant is a creditor who may maintain this suit in this court is unnecessary now to determine whether he is also a stockholder as alleged."

Hence, there is nothing to indicate that if jurisdiction had rested on Hanssen's status as a stockholder, the District Court would have exercised its discretion in favor of appointing receivers. In that event very different considerations of policy and expediency would have been invoked.

The same view of the matter was taken in the Circuit Court of Appeals (Rec., p. 650).

Consequently, Hanssen's disputed claim to status as a stockholder presents no question for determination in this court which is only concerned with the questions of law raised by the jurisdiction actually exercised.

(2) Moreover, as a mere custodian of Hannevig's stock certificates on behalf of the pledgees of the certificates, Hanssen was not a stockholder of the Pusey & Jones Company within the meaning of the Delaware statute.

Hanssen was never a stockholder of record of the Pusey & Jones Company.

Hence, upon his claim as a stockholder seeking to invoke the Delaware statute, Hanssen is in no better position to secure the relief he asks in the Federal court than he is upon his claim to be a simple contract creditor. He has failed to reduce his status to ownership of record, just as he has failed to reduce his contract debt to a judgment. In either case, he has but a cause of action.

The Delaware statute clearly does not contemplate an extension of the Chancellor's jurisdiction to anyone who merely asserts an interest in a certificate of stock. The applicant must be an actual "stockholder" at the time of making the application. The statute is astonishingly drastic and arbitrary, and will receive only the strictest construction.

(3) Furthermore, the power of attorney under which Hanssen held the stock certificates did not authorize him in any way to maintain any action thereon and did not constitute him personally a pledgee of the stock. Nine Norwegian parties (individuals and corporations) had been induced by Hannevig through false representations to pur-

chase rights in certain contracts (Rec., p. 439, *et seq.*). When the fraud was discovered, these nine parties employed Hanssen, who was an attorney at law, to take steps to enforce their rights and gave him a power of attorney, the material part of which reads (Rec., p. 495) :

"We, the undersigned, members of 'the Christiania Group of Norwegian Shipowners,' hereby authorize Mr. H. Karluf Hanssen, attorney at law, of Haugesund, to negotiate on our behalf, and in case, to make a binding agreement with Mr. Christoffer Hannevig regarding payment of security, thereunder, in case, payment in the form of tonnage, for all 'overpayments' and differences in instalments pertaining to the nine contracts belonging to us at the Pusey and Jones yards and, in case, to take all legal steps which he may deem necessary in order to secure our said claims."

No one of these powers gave Hanssen authority to hold, either as the owner of the stock or as a pledgee thereof, any stock or securities given to him by Christoffer Hannevig, nor did the power of attorney authorize Hanssen in any way to maintain any action whatever on such stock. He was given no right to sue in his own name—much less to bring an action as a stockholder to have a receiver appointed for any corporation. Any legal steps which Hanssen was authorized to take were legal steps against Hannevig and not against the Pusey & Jones Company.

Under this power of attorney, Hanssen negotiated with Hannevig on February 13th, 1920, the agreement set forth in Hanssen's rebuttal affidavit (Rec., p. 489). By that agreement, Hannevig acknowledged the delivery to Hanssen, as representative of the nine Norwegian parties, of certain

securities "given below as security for correct payments for obligations with interest which are now due." The instrument then reserves to Hannevig the following right (Rec., p. 489):

"I reserved that the deposited values (i. e., the stocks and notes) shall be delivered to me and can be disposed of by me free of any encumbrances on condition that I pay my obligations in Norwegian currency at an exchange taken at the respective instalment dates with an interest of 6 per cent., and this shall not acknowledge that I am bound to pay anything else, except \$565,875.00, which I have already paid out in taking over the S. S. 'Fire Island,' in American Dollars."

Obviously this paper was not sufficient to make Hanssen personally a pledgee or owner of any of the securities delivered. The securities were merely delivered to him as custodian. He became a depositary and nothing more. *A fortiori* he did not become a stockholder.

The contract of delivery contains no provision that the persons to whom the stock is delivered have any right of sale over it. That right is reserved expressly to Hannevig. All that the nine Norwegian parties could do was to hold the stock and notes until ultimately paid by Hannevig, or possibly they could bring a suit against Hannevig to foreclose their lien.

No notation of the pledge was ever made upon the stock books of the corporation, as is required by the Delaware statute. The General Corporation Law of the State of Delaware provides:

"Whenever any transfers of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer" (Sec. 16).

"Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held, and persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy may represent said stock and vote thereon" (Sec. 18).

There is nothing in the agreement with Hannevig of February 13th, 1920, if it can be regarded as a pledge at all, giving the pledgee the right to vote the stock (Rec., p. 189); and no request was ever made upon the company for a notation on the records that the transfer was made for collateral security. The demand made in this suit for a transfer to Hanssen is a demand for an absolute transfer and not a transfer in accordance with the Delaware statute, indicating that Hanssen would hold the stock as collateral security (Rec., p. 23). There is nothing to show that the pledge has ever been foreclosed.

All the statements which appear in the affidavits or answer filed on behalf of the Pusey & Jones Company, describing Hanssen as a pledgee of stock, refer merely to his technical rights in that respect as disclosed by the information then in possession of the company. The subsequent disclosure of his real relationship, as set forth in the power of attorney filed with his affidavit of rebuttal, and in the authentic copy of his agreement with Hannevig, deprives him of any status whatever as either owner or pledgee of the stock, and supersedes those statements.

(4) Even had Hanssen a status as pledgee, it is submitted that he would have no right to main-

tain this bill as a "stockholder" under the Delaware statute.

No decision is or can be cited that a mere pledgee is a stockholder within the meaning of that statute. The dictum of Judge Goff in *Gorman-Wright Co. v. Wright*, 134 Fed., 364, refers only to the general power of a pledgee of stock "to be heard in a court of equity concerning its preservation and the protection of his interest therein."

That dictum has no reference to the Delaware statute. It is based on a section of Judge Thompson's work on corporations which has been omitted from the later editions thereof; on a reference to Kent, which is clearly erroneous; and on the text of 22 A. & E. Ency. of Law 907, which is supported by a single citation (*Baldwin v. Canfield*, 26 Minn., 43). That single citation is a square authority against Hanssen because it holds that, whereas the equitable owner of stock might under the peculiar circumstances of that case bring a suit in equity to remove a cloud on the title of the corporate property, he could not do that directly as a *stockholder*.

Wherever relief has been afforded in equity to the pledgee of stock, it has been because of his property interest, not because he was a stockholder.

In *Elyea v. Lehigh Salt Mining Co.*, 169 N. Y., 29, and *Pray v. Todd*, 71 N. Y. App. Div., 391, it was held that, under statutes as to a pledgee's rights similar to the Delaware statutes quoted above, a pledgee of stock which remains standing in the name of the pledgor on the books of the company has no voice in the affairs of the corporation.

SEVENTH POINT.

The Pusey & Jones Company was greatly aggrieved and irreparably damaged by the jurisdiction assumed and the decrees made below.

The grievance of the Pusey & Jones Company is that, without jurisdiction or due process of law, it has been deprived of the control of its own affairs. At a time when the Company's difficulties were being ironed out without any waste or threat of waste of its assets, and without any threat of piecemeal sales thereof, the Court appointed receivers for the corporation *ex parte*, being of the opinion that the Company was insolvent. The District Court seems to have been largely influenced in the exercise of its discretion by the fact that a large judgment had been obtained against petitioner by Baltimore Dry Docks & Shipbuilding Company, and by the charge that this judgment was collusive. But execution on this judgment had been, by agreement, adjourned for many months (Rec., pp. 379, 398).

The Company had no current obligations which it was not able to meet out of the funds in its possession, which included \$190,000 cash on hand and \$240,000 in immediately negotiable paper (Rec., pp. 364-366). The Company was successfully conducting its affairs and was able to continue to do so (Rec., pp. 150, 151, 345-346, 371, 363-365). Substantially all important stock and creditor interests (except Hanssen) had entered into an agreement (Rec., p. 65), through the operation of which it was expected that the Company would continue to carry on as a going concern pending the adjustment of its large claim of approximately \$14,000,000 against the Shipping Board, the settlement of which was

expected to take care of the Baltimore Dry Docks Company's judgment, and leave the Pusey & Jones Company a cash balance over all liabilities of several million dollars (Rec., pp. 157-158, 345-417). This agreement would certainly not have been entered into had not the parties thereto believed that the settlement of the large claim against the Shipping Board would result in making the stock of the Pusey & Jones Company of considerable value.

CONCLUSION.

The decrees below should be reversed; the bill of complaint dismissed, and the receivership vacated, with costs.

Dated, New York, February 5th, 1923.

Respectfully submitted,

LINDLEY M. GARRISON,
CHARLES H. TUTTLE,
SELDEN BACON,
SAUL S. MYERS,

Of Counsel.

FEB 17 1923

Supreme Court of the United States

October Term—1922.

THE PUSSEY AND JONES COMPANY
(a corporation),

Petitioner,

against

HANS KARLUF HANSEN, *Respondent,*

and

JACOB PREENBARN, JR., H. KYRSCHOW,
HARRY BORTHEIN, A/S THOMP, A/S MAR-
TIM, A/S HAGO, A/S MEROATOR, A/S
SCHLANDSKEN LLOYD and E. and N. CHR.
EVENSEN,

Intervenors Respondents.

Dec. 21.
On Writ of Certiorari
to the United States
Circuit Court of Ap-
peals for the Third
Circuit.

BRIEF ON BEHALF OF RESPONDENT

WILLIAM H. BUTTON,
JOHN P. NIELDS,
WM. G. MAHAFFY,

of Counsel.



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Supreme Court of the United States

October Term—1922.

THE PUSEY AND JONES COMPANY
(a corporation),
Petitioner,
against

HANS KARLUF HANSSEN, *Respondent,*
and

JACOB PREBENSEN, JR., H. KJERSCHOW,
HARRY BORTHEN, A/S TROMP, A/S MARI-
TIM, A/S HAUG, A/S MERCATOR, A/S
SORLANDSKE LLOYD and E. and N. CHR.
EVENSEN,
Intervenors-Respondents.

No. 431.
On Writ of Certiorari
to the United States
Circuit Court of Ap-
peals for the Third
Circuit.

BRIEF ON BEHALF OF RESPONDENT.

Statement of the Case.

In view of various contentions made as to the status of the respondent in instituting the proceeding below, it is desirable fully to understand the origin and development of this litigation.

The respondent, Hans Karluf Hanssen, is a citizen of the Kingdom of Norway. The Pusey and Jones Company, the petitioner, is a Delaware corporation. Some years ago one Christoffer Hannevig succeeded in acquiring practically the entire capital stock of said corporation. Hannevig was a manipulator of ship contracts and as the event demonstrates, his operations were not restrained by scruple.

The nine Norwegian intervenors-respondents, who are all citizens of Norway or corporations organized under the laws of that Kingdom, purchased from Hannevig a number of contracts for the delivery of ships then under construction and at a time when such vessels were of much value on account of the exigencies of the war. In disposing of the contracts Hannevig represented to these Norwegians that he had already paid the concerns building the ships large sums of money, whereby the future payments under said contracts would be that much diminished. This representation was untrue to the extent of about \$1,200,000. These intervenors, therefore, were defrauded to that extent by Hannevig. Discovering this situation they commissioned Hanssen to come to the United States to protect their interests.

Hanssen succeeded in getting Hannevig to reduce the claim to about \$800,000. Hannevig acknowledged the amount to be due, and to secure its payment pledged to Hanssen nine promissory notes of the petitioner corporation, the face value of which aggregated \$650,000. Most of these notes were payable to Christoffer Hannevig, Inc., a New York corporation, whose stock was owned by Hannevig, and by said corporation were endorsed in blank. The largest one, however, for \$300,000, was payable to Hannevig personally and was by him endorsed in blank. All the notes were made and payable in the State of Delaware. Hannevig further pledged as security for the same indebtedness 7,200 shares of the preferred stock of the petitioner corporation, 7,000 shares of which stood in the name of said Christoffer Hannevig, Inc., the certificates for which were endorsed for transfer to Hannevig and by him endorsed in blank. The other certificate for 200 shares stood in the name of Hannevig personally and was by him endorsed in blank for transfer. These promissory notes and certificates of stock were delivered to Hanssen under an agreement of pledge (record, p. 489) and were subsequently repledged by Hannevig sub-

ject to the pledge to Hanssen for the security of other indebtedness. No question has ever been raised concerning the title of Hannevig to said notes and shares of stock, and nothing appears in this record tending to invalidate such title.

Having accomplished the foregoing adjustments Hanssen returned to Norway taking the securities with him. During the succeeding year he made various demands upon Hannevig for the payment of the indebtedness, all of which were unavailing. Hannevig's financial condition becoming more and more critical, Hanssen returned to the United States in April, 1921. Learning of the filing of a certain judgment against The Pusey and Jones Company and the making of a certain agreement in regard to the management of that corporation, he brought the present proceeding for the appointment of receivers. This was done with the full knowledge and consent of the nine intervenors-respondents (record, p. 506).

The bill of complaint sets out the jurisdictional facts showing diversity of citizenship and that the requisite amount is involved, describes the organization and capitalization of the petitioner corporation, alleges the issuance by the corporation of the stock pledged to Hanssen, alleges that the same was sold, assigned, transferred and delivered to him and became his property; that the complainant made demands upon the petitioner corporation for a transfer of the stock on the corporate books into the name of the complainant, which demands were refused; alleges that complainant is a creditor of the respondent corporation on the promissory notes which are fully described; alleges that said notes were assigned, transferred and delivered to the complainant for a good and valuable consideration and that the complainant is the lawful holder thereof; that payment of the notes, though demanded, had been refused; the bill then sets forth the Delaware statute involved in this proceeding,

although it is not stated that the proceeding is entirely based upon said statute; alleges that the respondent corporation was insolvent in that it was unable to pay its obligations as they fell due in the due course of business; alleges that a judgment for upwards of eight hundred thousand dollars had been taken against the respondent corporation; that the respondent corporation had executed its bond to the United States Shipping Board Emergency Fleet Corporation for five million dollars and had secured the same by its mortgage covering all of its plants; that various other litigations were pending against the respondent corporation; that by reason of separate sales under said judgment or said mortgage or in pursuance of said other litigations there would be a great waste of the assets of the respondent corporation and an unequal and inequitable application of its assets to its debts; that a dispute existed between the respondent corporation and said Fleet Corporation involving large amounts of money; that certain creditors, stockholders and representatives of Hannevig, who recently had been thrown into bankruptcy, had entered into an agreement, attached to the complaint, under which a board of directors had been installed in violation of the rights of other stockholders and creditors; that the judgment which had been entered was illegally and unlawfully secured on account of various facts alleged in the bill; that receivers should be appointed with authority to apply to set aside said judgment. Said bill prays for the appointment of receivers to take charge of the business and affairs of the respondent, collect outstanding debts, with power to prosecute and defend actions and with such other powers as might seem proper; for an injunction; that the respondent corporation be decreed to transfer said 7,200 shares of its preferred stock to the name of the complainant and for other relief.

Upon the service and filing of this bill the District Court, on June 9, 1921, *ex parte* appointed Willard

Saulsbury and Charles B. Evans, receivers, basing said action upon the necessity of giving said receivers an opportunity to move to set aside said judgment during the then pending term of the Court, which was about to expire. Said order contains various other provisions unnecessary to mention (record, p. 79). The petitioner immediately moved to vacate said order. Upon hearing the motion to vacate was denied on June 13, 1921 (record, p. 87).

The petitioner filed an answer (record, p. 137). Without reviewing all the denials and allegations in said answer, it is sufficient to say that it denied that said complainant was a stockholder or a creditor of the respondent; alleged that a counter-claim to the notes existed; denied mismanagement or waste; maintained that the respondent was entitled to a jury trial on the question of the complainant being a creditor and alleged that the proceeding could not be maintained in equity in a Federal Court.

Later a further hearing was had and on August 1, 1921, the District Court confirmed its order appointing the receivers (record, p. 603). Upon appeal this order was affirmed by the Circuit Court of Appeals for the Third Circuit and now comes here upon a writ of certiorari (record, p. 652).

POINT I.

The Delaware statute justifies the procedure herein and the action of the Court below.

The Delaware statute involved in this proceeding was enacted over thirty years ago. Its language is as follows:

“Whenever a corporation shall be insolvent, the Chancellor, on the application and for the benefit of any creditor or stockholder thereof,

may, at any time, in his discretion, appoint one or more persons to be receivers of and for such corporation, to take charge of the estate, effects, business and affairs thereof, and to collect the outstanding debts, claims, and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by such corporation and may be necessary and proper; the powers of such receivers to be such and continued so long as the Chancellor shall think necessary; provided, however, that the provisions of this section shall not apply to corporations for public improvement." Section 3883 of the Revised Code of Delaware (1915).

This statute has been applied frequently both in the State and the Federal Courts and its meaning, as well as the proper procedure under it, cannot now be questioned.

Before discussing the question of whether its provisions will be enforced in equity by a Federal Court, it is proper to determine its meaning and application as shown by the decisions.

It is well settled that all that is necessary to enable the Court to proceed is to show, *first*, that the complainant is a creditor or a stockholder, and if a creditor it is not necessary to show that his claim has been reduced to judgment, and *second*, that the corporation is insolvent.

It is further settled beyond question that the procedure under the statute is by the ordinary equitable procedure, a bill of complaint.

Such bills of complaint have been entertained in numerous cases by the Court of Chancery in Delaware, and by the District Court of the United States sitting in equity. Those courts at all times have proceeded under the practice governing all receiverships in equity.

In *Sill v. Kentucky Coal Co.* (11 Del., ch. 93) the Court stated:

"It is not necessary that the complainant be a judgment creditor."

Other State cases in which the statute has been discussed and applied in the courts of Delaware are the following:

Thoroughgood v. Georgetown Water Co. (1910), (9 Del., ch. 84; 77 Atl., 720);

Mark v. American Brick Mfg. Co. (1912), (10 Del., ch. 58; 84 Atl., 887);

Ross v. South Delaware Gas Co. (1914), (10 Del., ch. 236; 89 Atl., 593);

In re D. Ross & Son, Inc. (1915), (10 Del., ch. 434; 95 Atl., 311);

Whitmer v. Whitmer & Sons, Inc. (1916), (11 Del., ch. 185, 222, 225; 98 Atl., 940);

Hooper v. Fesler Sales Co. (1916), (11 Del., ch. 209; 99 Atl., 82);

Badenhausen Co. v. Kidwell (1919), (107 Atl., 297);

Jones v. Maxwell Motor Co. (115 Atl., 312).

In *Jones v. Mutual Fidelity Company* (123 Fed., 506), at page 523 the Court stated:

"As before stated proceedings under the Delaware statute are of an essentially equitable nature, and under its settled construction may be instituted and maintained by non-judgment creditors unsecured by any lien or trust."

Whatever may be said as to the meaning of the word "creditor" in other statutes, these and many other decisions leave no question but that in this Delaware statute the term includes unsecured general creditors as well as judgment creditors.

That the Court may proceed upon the sole fact that the corporation involved is insolvent is equally well settled, and in fact is apparent from the terms of the statute itself. That such is the case is settled by the Delaware decisions above referred to and by many decisions in the Federal Courts, among which are *Jones v. Mutual Fidelity Company*, *supra*, and *Adler v. Campeche Laguna Corporation* (257 Fed., 789). In the last case mentioned the Court states:

“The Delaware statute enlarges the jurisdiction of the Courts of Chancery over the appointment of receivers of corporations to include cases where insolvency is the sole ground for the appointment.”

That the procedure also is settled to be by ordinary bill of complaint and that such procedure will follow the ordinary course of receivership proceedings in equity is equally well settled. An examination of all the Delaware cases above cited will show that such was the procedure in each instance, and likewise such has been the procedure in every instance in which the jurisdiction of the Federal Court has been invoked.

The scope of the proceedings after the appointment of receivers is also well settled. It is apparent from the cases that such receivers have the general powers of other receivers in equity, and not only the decisions show, but the language of the statute itself indicates, that such a receivership may continue as long as the exigencies of the case may require. It may result in a complete administration of the property of the corporation, or, on the other hand, it may preserve the assets until circumstances indicate that it is proper to turn them back to the directors and stockholders without the adjustment or payment of debts or any distribution whatsoever of property.

That such is the case is apparent from the following statement in the opinion of the Court in *Jones v. Mutual Fidelity Company*, *supra* (p. 523):

"The powers of receivers appointed under the act are 'such and continued so long as the Chancellor shall think necessary.' The statute contemplates two classes of cases: First, proceedings which may result in the full and final administration and distribution on an equitable basis of the assets of the insolvent corporation among its creditors and, should a surplus from any cause exist, among its stockholders, subject to valid existing liens, if any; and, secondly, proceedings which may result in the taking possession of such assets and their retention by the court until such time as by a prudent, economical and successful management of the affairs of the insolvent corporation, it may be restored to solvency. In the first class of cases the receivership usually continues until the time arrives for final distribution, and, in the second, the receivership continues until the corporation has been restored to solvency."

In *Badenhausen Co. v. Kidwell* (107 Atl., 297) the Supreme Court of Delaware, the highest court of the State, outlined the powers of a receiver under this statute as follows:

"If after the decree of this court shall be certified to the court below, a proper showing should be made to the chancellor, he doubtless would, under the powers vested in him, make such modification of his decree as may be necessary to authorize the receivers appointed by him to continue the business of the corporation respondent below for the express purpose of conserving its assets and restoring it to a condition of solvency.

Or if it should be shown that the corporation respondent below has attained a condition in which it can meet its obligations in the usual course of business, or that there is a reasonable prospect that its business can be successfully con-

tinned, notwithstanding any deficiency of assets, the chancellor would discharge the receivers and permit the corporation respondent below to resume its business."

It is, therefore, apparent that there can be no doubt as to the scope and meaning of the statute here involved. Its purposes seem to be plain and the method of its application seems to be well settled.

POINT II.

The appointment of the Receivers in this proceeding was well within the discretion of the District Court.

Again postponing a discussion of the question as to the power of the District Court to act, it is apparent that if such power existed its action was proper. The appointment of receivers is always discretionary with the Court and we presume it will not be disputed that such discretion will not be disturbed by a court of review unless it was clearly abused.

It has already been indicated that all that need appear to the Court to authorize it to appoint these receivers are the two facts that the complainant was either a stockholder or a creditor, and that the corporation was insolvent.

The complainant was both a creditor and a stockholder, but his status as such will be more fully discussed in other connections.

That the corporation was insolvent is equally apparent. The bill and the affidavits show that a large judgment had been taken against it; that other litigation was pending; that it had refused to pay the notes held by the complainant; that it was involved in a dispute with the Fleet Corporation, each party claiming that millions of

dollars were due from the other; that other circumstances indicated that it was unable to pay its obligations in due course. The appointment of the receivers was on June 9, 1921 (record, p. 79). If any doubt in regard to the insolvency of the corporation otherwise exists that doubt is set at rest by the fact that on July 23, 1921, the corporation filed a voluntary petition in bankruptcy in the Southern District of New York, in which it is recited that the executive committee of the company had passed a resolution with the following preamble:

“Whereas The Pusey and Jones Company is unable to pay its debts and is insolvent within the meaning of the Acts of Congress relating to bankruptcy” (record, p. 581).

The reasons that moved the District Court to appoint the receivers are fully stated in the opinion of the Court (p. 516). In addition to the insolvency of the defendant it is clearly shown that the reason for haste in the appointment was that the receivers could move to set aside the judgment that had been obtained against the corporation, which would pass beyond the control of the Court within four days of the appointment, and, furthermore, that the then directors of the corporation were installed in pursuance of an agreement that took the management of the corporation from its stockholders and practically vested it in a committee of creditors, contrary to the Delaware statutes governing the conduct of corporations.

Under these circumstances, it cannot be said that the proceedings below have involved any abuse of discretion, provided the Court had jurisdiction of the matter.

POINT III.

The question of the jurisdiction of a federal court to proceed under the Delaware statute at the instance of a creditor who has not reduced his claim to judgment is not determinative of this proceeding.

The assault that the petitioner makes upon the validity of the proceedings below is based almost entirely upon the proposition that the Delaware statute is one which cannot be enforced in equity in the federal courts, the claim being that the respondent had an adequate remedy at law and that the petitioner was deprived of a jury trial contrary to the provisions of the Seventh Amendment.

The importance of these questions is such and the consequences of a decision upholding such contentions are so far reaching, as will be pointed out elsewhere, that possibly this Court will not decide such questions except in a case where such decision is necessary for its determination. We submit that such a situation is not presented by this record for two reasons: *first*, the respondent was a stockholder as well as a creditor and as such could proceed unhampered by any of the obstacles urged by the petitioner; *second*, the intervention of the United States Shipping Board Emergency Fleet Corporation on October 8th, 1921, injected a party that had a direct lien upon all of the valuable real estate owned by the petitioner.

First: The respondent was a stockholder as well as a creditor and as such could proceed unhampered by any of the obstacles urged by the petitioner.

The bill alleges that Hanssen is the owner of 7,200 shares of the preferred stock of the Pusey and Jones Company; he demanded that the stock be transferred

to his name, which demand was refused by the company, and among other things he prays that the Court may decree that said stock shall be transferred to his name.

It appears from the affidavits that this stock being owned by Hannevig was delivered to Hanssen as collateral security for a large indebtedness; and it was endorsed for transfer. Holding these certificates, Hanssen undoubtedly had the right to such a transfer and to the issue to him of new certificates in his name. The fact that the Delaware law requires that in such an instance it shall be noted on the entry of the transfer that it is for collateral security can make no difference. It does not lie in the mouth of this petitioner to object that Hanssen is not a stockholder of record when without right the petitioner itself has prevented him from becoming such.

Furthermore, it makes no difference whether he is a stockholder of record or not; he holds a large beneficial interest in the stock and the remaining interest of Hannevig is at most a naked legal title. The Delaware statute is a remedial statute and should be construed to afford the protection which it purports to afford, and it is apparent that such protection should be accorded to those who have the beneficial interest in the stock of the company.

It is uniformly held that the delivery of a certificate of stock transferred in blank passes the title to said stock as between the parties and constitutes the recipient thereof a stockholder regardless of a transfer on the books of the corporation.

In *Johnston v. Laflin*, 103 U. S., 800, at 804, this Court states:

"But as between the parties to a sale, it is enough that the certificate is delivered with authority to the purchaser, or anyone he may name, to transfer it on the books of the company, and the price is paid."

In *National Bank v. Watsontown Bank*, 105 U. S., 217, at 221, this Court, in a case in which such certificates were delivered as collateral security, states:

"As collateral security for the payment of their notes, discounted and held by the Cecil National Bank, and with the power to sell for the purpose of payment, the title passed by the delivery of the certificate, with the accompanying power of attorney."

In *Cushman v. Thayer Manufacturing Company*, 76 N. Y., 365, the Court of Appeals stated:

"The delivery of the certificate, as between the owner and assignee, with the assignment and power endorsed, passes the entire legal and equitable title in the stock, subject only to such liens or claims as the corporation may have upon it."

In *Jones on Collateral Securities*, Third Edition, Section 168, occurs the following statement fortified by the citation of numerous authorities:

"Whatever be the view taken of the necessity of a transfer upon the books of a corporation in order to protect the title of such assignee as against subsequent attaching creditors of the assignor, it is agreed that, as between the parties themselves, the title passes by indorsement and delivery of the certificate, without any entry of the transfer upon the books of the corporation; or even without filling up the transfer, where this has been signed in blank."

It is true that most of the cases hold that until a transfer is had upon the books of the corporation the stock will be subjected to any lien the corporation may have against the stock, but this is entirely immaterial and in this case it does not appear that there are any such liens. It must follow from the above decisions that when Hannevig delivered this stock to Hanssen with a

duly executed power of attorney to transfer it the title to the stock passed to Hanssen and constituted him a stockholder of the company, and, of course, as such he had a right to institute this suit.

It is apparent that the only persons interested in the property of a corporation are its stockholders and creditors and it is the manifest object of the statute to afford protection to anyone having a substantial right in the property of the corporation. Certainly, a pledgee of the securities of a corporation, both of its stock and its notes, the title to which is transferable by delivery, has such a substantial interest and should be protected under the statute.

A statute of New Jersey provides that after the insolvency of a corporation a receiver will be appointed upon the application of any "creditor or stockholder" and it has always been held under such statute that the beneficial owner of the stock can proceed.

In *Reinhardt v. Interstate Telephone Co.* (71 N. J. Equity, 70), the Vice-chancellor held that a stockholder could proceed although his stock stood in the name of the broker who purchased it for him.

In *O'Grady v. U. S. Telephone Co.* (71 Atlantic, 1040), the Court of Errors and Appeals of New Jersey under the same statute held that the owner of shares of stock of the defendant corporation could proceed although he had deposited those shares under a voting trust agreement which entitled the voting trustee to exercise all rights of every name and nature including the right to vote. It was specifically objected that the complainant was not a stockholder within the meaning of the statute. The court approves the *Reinhardt* case, *supra*, and states:

"The right of O'Grady, therefore, to maintain this suit depends upon whether he is in equity the owner of the stock represented by the voting trust certificate which he holds. That he is such owner seems to us to be plain."

In *Green v. Hedenberg* (159 Ill., 489), the Supreme Court of Illinois held that a pledgee of stock could maintain a bill against a corporation for misappropriation of the corporate funds, and stated:

"It is true, in this case complainant was only a stockholder by reason of his holding the 750 shares of stock as collateral security; but if, as alleged, that security was impaired by a misappropriation of the corporate funds, we see no reason, and none is even attempted to be shown, why he might not, as any other stockholder, maintain the bill. *Baldwin v. Canfield*, 26 Minn., 43, is in point."

It is further true that it is the duty of the holder of securities as collateral for a loan to do everything in his power to protect the value of such securities. It must follow that if a proceeding for the appointment of a receiver is necessary to the preservation of the value of the pledged securities, it is the duty of the pledgee to institute the proper proceedings therefor and the courts have frequently indicated such to be the law.

In *Warburton v. Trust Co. of America*, 169 Fed., 974, in speaking of collateral security, the Court said:

"A bond or any chose in action which is transferred as collateral security is put under the dominion of the creditor to make his claim out of it. It is not in the nature of or subject to the incidents of a pawn or pledge. (*Muirhead v. Kirkpatrick*, 21 Pa., 241.)

The Trust Company was required to employ reasonable diligence in the collection of any money which could be made on these securities, and especially so when the securities were obligations against an insolvent corporation passing through bankruptcy."

In *Gorman-Wright Co. v. Wright*, 134 Fed., 363, the Circuit Court of Appeals for the Fourth Circuit considered the status of a pledgee of stock and held that

such a pledgee had all the rights that the pledgor had in regard to seeking the aid of a court of equity to protect the property and the Court stated:

"We think it beyond question that the pledgee of stock has such an equitable interest in it as will entitle him to be heard in a court of equity concerning its preservation, and the protection of his interests therein, to the same extent, at least, as the stockholder pledging it would have. 2 *Thomp. Corp. Sec.* 2657; 22 *A. & E. Ency. of Law* (2d Ed.) 907; 2 *Kent's Com.* (14th Ed.) 349. But while it is true that the pledgee of stock may sue in equity concerning it, with the same rights and privileges that the pledgor had, does it follow that the court below had jurisdiction of this case?"

The Court dismissed the above proceeding on account of the lack of requisite diversity of citizenship, but this does not affect the soundness of the above views.

It is, therefore, submitted that Hanssen was well within his rights in instituting these proceedings as a stockholder of The Pusey and Jones Company.

It is true that the courts below did not base their action on the fact that Hanssen was a stockholder, but that makes no difference if the fact exists. It was not a fact that would in any way enter into the discretion of the court in regard to the appointment of receivers. It simply bears on the question of whether the Court had power to act, but once having that power the considerations leading to the appointment of receivers would be the same whether the power was based on Hanssen's status as a creditor or a stockholder.

Certainly the objections that are raised to such a proceeding at the instance of a common creditor do not apply to one instituted by a stockholder, for the reason that the stockholder has no action at law whatsoever, and never did have. If he can get any protection for his rights it must be in equity and such protection always

has been afforded in equity. There is no way in which either he or the corporation could procure a jury trial in regard to his rights as a stockholder and therefore the Seventh Amendment does not apply and certainly it cannot be said that as a stockholder he has an adequate remedy at law. The long line of stockholders' suits that have been entertained by all courts, state and federal, demonstrate these propositions. This very situation here presented has arisen in the federal courts and the above principles have been vindicated.

In *Jacobs v. Mexican Sugar Co.* (130 Fed., 589), the complainants were stockholders of the defendant corporation and also creditors who had not reduced their claims to judgment. The proceeding was in the District Court for the District of New Jersey and was brought under the New Jersey statute which provides that "any creditor or stockholder" may proceed to obtain the appointment of receivers and other relief whenever any corporation becomes insolvent. The jurisdiction of the Court was contested upon the ground that it could not be enlarged by a state statute. The Court held that so far as the complainants were simple contract creditors without lien on the defendant's property, they had no standing to prosecute the bill, the state statute to the contrary notwithstanding (p. 591), the Court proceeding upon the authority of *Scott v. Neely* and other cases. After having so decided, the Court further held (p. 592):

"But both of the complainants come also into court as stockholders with large interests, alleging the insolvency of the company and the maladministration of its affairs and the question is whether in that capacity they are entitled to be heard."

The Court then states that in the absence of statute there would be no general jurisdiction of the case, and add (p. 592):

"But in the present instance there is such a statute and if the right to intervene which it confers is essentially equitable in character it is properly appealed to; and that it is, as it seems to me, there can be little doubt."

A receiver was appointed, the Court concluding its opinion as follows (p. 593):

"But it is just at this point that the statute of the state steps in. By it a single stockholder, alleging the insolvency of the corporation and its inability to further carry on its business with safety to the public and advantage to those interested therein, may ask the intervention of the court to enjoin the exercise of its franchises and wind up its affairs. The court, where this course is taken, is thus put in possession of the case by one who has the undoubted right to invoke its jurisdiction, and the rest is a mere matter for the exercise of its recognized equity powers. The bill is therefore well brought, and must be sustained."

In the case of *Darragh v. Wetter Manufacturing Co.*, Circuit Court of Appeals, Eighth Circuit, 78 Fed., 7, under a similar statute the court not only upheld the right of a common creditor to proceed, but stated (p. 15):

"If a creditor of another state could not proceed to wind up an insolvent corporation in the State of Arkansas without a judgment and an execution returned unsatisfied under this statute a stockholder of such a corporation certainly could, and the effect of such a holding would be to give a stockholder of an insolvent corporation a right to the sequestration of its assets superior to that of a creditor."

In *Kessler v. Wm. Necker, Inc.* (258 Fed., 654), a bill was brought under the New Jersey statute and, although the Court discusses with evident approval the cases which hold that a common creditor may proceed, it sus-

tained the bill and continued the receivership upon the following ground (p. 660) :

"It is not necessary, however, to sustain the bill on the ground that the complainants or any of them were simple contract creditors; all of them but two, one original and one intervening, were stockholders, and as such may maintain the action."

It is, therefore, submitted that this bill may properly be sustained on the ground that the complainant is a stockholder of the corporation, regardless of his status as a creditor.

Second: The intervention of the United States Shipping Board Emergency Fleet Corporation on October 8, 1921, injected a party that had a direct lien upon all of the valuable real estate owned by the petitioner.

Another reason why the questions involving the respondent's status as a creditor are not determinative is that by leave of the District Court the United States Shipping Board Emergency Fleet Corporation intervened as a party complainant and has a mortgage lien on all the real estate of the petitioner. It will not be disputed that the existence of such a direct lien gives equity jurisdiction for the appointment of receivers unhampered by the obstacles that sometimes confront common contract creditors. The status of such a lienor having been considered at all times a subject for equitable protection, the claim is not a legal one and consequently there is no right to a trial by jury, nor is there any adequate remedy at law which must be exhausted. Certainly, if this intervenor had been an original complainant these propositions would undoubtedly have been admitted, but it is claimed in the opposing brief that the proceedings were so defective that they could not be perfected by a

subsequent intervention. This contention is not sound for the reason that the lower court had full jurisdiction over the original parties and had jurisdiction over the subject matter of the proceeding, any defect in jurisdiction arising from the fact that the complainant had not reduced his claim to judgment being one that could be waived, and from the further fact that the proceeding was legitimately in court if for no other purpose than that of enforcing the transfer of the preferred stock to the complainant's name. The petitioner's contention in this behalf seems to be in effect that there was no proceeding and therefore none in which the Emergency Fleet Corporation could intervene. This is not the situation for the above reasons, if for no others.

It furthermore is not correct that a defect of jurisdiction arising from the lack of capacity of a party may not be cured by the intervention of a party properly qualified. It must be remembered that this was a class action, being brought for the benefit of all stockholders and creditors. In such an action if the original complainant cannot qualify the proceedings are perfected by the intervention of one of the prescribed class who can qualify.

Hanna v. Lyon (179 N. Y., 107).

The action was brought by one Hanna as a stockholder for the benefit of all stockholders, but it developed that at the time of the commencement of the action he had disposed of his stock and therefore was not a stockholder. The Court of Appeals of New York, however, pointed out that a properly qualified intervenor had come in after the action had been begun and that cured the defect.

None of the cases cited in the opposing brief on page 6 on this subject control that question. No one of them was a class bill.

Rouse v. Letcher (156 U. S., 47), simply decided that a judgment on a claim to intervene is a final judgment.

Adler v. Seaman (266 Fed., 828), simply decided that the court will not force a party to intervene by the device of consolidating actions.

The Pennsylvania case simply decides that an intervenor is bound by the previous conduct of the suit.

The Georgia case contains no opinion, but it appears that the facts set forth in the intervening petitions showed no right to intervene.

The case of *Boston & M. R. R. v. Sullivan* (275 Fed., 890), simply holds that after receivers have been appointed a claimant, who has a claim for negligence, is not entitled to a jury trial.

POINT IV.

The federal Court has jurisdiction in equity to appoint a receiver under the Delaware statute at the instance of a simple contract creditor.

If, however, the Court considers it essential to the disposition of this case to pass upon the question of whether a creditor who has not reduced his claim to judgment can proceed on the equity side of the District Court of the United States to procure the relief provided for in the statute, we submit that the power undoubtedly exists in that Court so to proceed.

This question, so far as we have been able to discover, has never been passed upon by this Court and we fully realize the importance of the principles involved and the consequences that may flow from a decision of the question, whatever it may be. It is a question that cannot be disposed of by the simple method of calling the bill filed herein a creditor's bill for the collection of a debt and citing the case of *Scott v. Neely* that dealt with such a proceeding.

As Judge WOOLLEY remarked in the Circuit Court of Appeals in this case (279 Fed., at p. 492), the State Court of Chancery in Delaware and the federal courts in the District of Delaware for decades have undertaken to proceed under this statute in the administration of the affairs of insolvent corporations organized in the State of Delaware.

It is also true that in many of the other circuits similar jurisdiction has been exercised for a long period with the full approval of the Circuit Courts of Appeal in the circuits involved.

The propriety and the practical value of the exercise of such jurisdiction, increasingly important with the ever-growing complexity of corporate ownership and the great augmentation of business done by and property owned by corporations, is not only recognized but fully emphasized by the expression of public policy on the part of numerous States which have seen fit to pass statutes more or less similar to the one here involved with the idea of conferring this jurisdiction upon the courts of equity in their respective jurisdictions. Such statutes now exist in many States, among others in New Jersey, Illinois, Louisiana, Massachusetts, North Carolina and West Virginia. There is no indication that any of these States have found this policy an unwise one.

Nor will it be questioned in this Court that the privilege of invoking the aid of a federal court, instead of a state court, is a valuable privilege.

From these considerations it must be apparent that if this control over the administration of the affairs of an insolvent corporation has been based upon a misconception of the meaning of the Constitution of the United States and of the decisions of this Court, the consequences will be far reaching. If it is the law that a creditor, no matter how large his claim against a corporation may be, no matter how evident it may be that it is a just claim, must spend a protracted period in going through

the form of obtaining a judgment at law, and the return of an execution *nulla bona* before he can invoke the equitable jurisdiction of the federal courts to protect the corporate property in which he is so largely interested from dissipation and depredations always incident to insolvency, it is but another way of stating that his rights are precarious in the extreme. We reiterate that no such result can be predicated upon any decision yet made by this Court.

The fallacy that runs through the entire argument, so at length presented by our opponents, quite evidently is that they consider this a proceeding for the collection of a debt and strangely enough, after vigorous protests to the effect that they are being deprived of a jury trial, in a later portion of their argument and in another connection, they state:

"It is apparent upon mere inspection of the bill that *no final relief whatsoever is prayed for with respect to Hanssen's alleged rights as a creditor*. There is no prayer for judgment upon the alleged claim. There is no demand that the claim be impressed upon the Company's property as a lien, or that its property be sold to provide means of payment." (Opposing brief, p. 37.)

The principles enunciated by this court with ever-increasing clearness that underlie the question here involved are plain. If any difficulty exists in this case, it arises not from any doubt as to what those principles are, but from a difficulty in applying them.

We do not contend that the distinctions between equitable procedure and legal procedure in the federal courts can be abrogated by a state statute; nor do we claim that a state statute by the device of creating an equitable remedy to enforce a purely legal right can

thereby enlarge the equitable jurisdiction of a federal court; nor do we claim that a state statute can create a new right essentially legal in its character and by calling it an equitable right, or by providing that it shall be enforced in a court of equity, empower a federal court to proceed in its enforcement on the equity side.

We do, however, claim that from the foundation of the federal courts it has been well recognized that the subjects of the equity jurisdiction of and the equitable remedies administered by, the federal courts are not static, but are ever-increasing, both in regard to substantive rights which will be vindicated and in regard to the complexity and variety of remedies that will be applied.

We, therefore, base our contention upon the proposition that this statute of Delaware created a new right, one which did not before exist, that the right so created is essentially equitable in its nature and that it provided that such right should be enforced by a remedy that is among the most ancient applied by the Court of Chancery. On this basis we maintain that the jurisdiction should be upheld.

The above propositions have been laid down in many cases decided by this Court.

In *Scott v. Neely* (140 U. S., 106), a case that is the bulwark of our opponents' position, the Court nevertheless states:

"The general proposition, as to the enforcement in the Federal courts of new equitable rights created by the States, is undoubtedly correct, subject, however, to this qualification, that such enforcement does not impair any right conferred, or conflict with any inhibition imposed, by the Constitution or laws of the United States."

After having stated in *ex parte McNiel* (13 Wall., 236), that

“This principle may be laid down as axiomatic in our National jurisprudence; a party forfeits nothing by going into a federal tribunal;”

and in *Davis v. Gray* (16 Wall., 203), at page 221, that

“A party by going into a National court does not lose any right or appropriate remedy of which he might have availed himself in the state courts of the same locality. The wise policy of the Constitution gives him a choice of tribunals.”

this Court said in *Broderick's Will* (21 Wall., 503), at page 520:

“Whilst it is true that alterations in the jurisdiction of the State courts cannot affect the equitable jurisdiction of the Circuit Courts of the United States, so long as the equitable rights themselves remain, yet an enlargement of equitable rights may be administered by the Circuit Courts, as well as by the courts of the State.”

This same principle has been carried down through many cases and this Court in *Louisville & Nashville Railroad v. Western Union Telegraph Co.* (234 U. S., 369), set out the following principles in discussing a statutory enlargement of equitable rights:

“There are many state statutes of this type and our decisions show that their enforcement in the Federal courts is subject to but three restrictions (1) the case must be within the general class over which those courts are given jurisdiction; (2) a suit in equity does not lie in those courts where there is a plain, adequate and complete remedy at law; (3) in those courts there can be no commingling of legal and equitable remedies or substitution of the latter for the former, whereby the constitutional right of trial by jury in actions at law is defeated.”

In *Greeley v. Lowe* (155 U. S., 58, at p. 75) this Court stated:

"This court has held in a multitude of cases that where the laws of the particular State gave a remedy in equity, as for instance, a bill by a party in or out of possession, to quiet title to lands, such remedy would be enforced in the Federal courts, if it did not infringe upon the constitutional rights of the parties to a trial by jury."

It, therefore, becomes apparent that if this Delaware statute creates a new right of an equitable nature or recognizes and enlarges an equitable right already existing and affords a remedy consistent with the practice in equity, it will be enforced in the federal courts.

On the other hand, it is equally apparent from these principles that a state statute attempting to confer on a court of equity power to enforce a right that is legal in its nature and for the enforcement of which there is a complete and adequate remedy at law would be ineffective to empower the federal courts to proceed to apply such an equitable remedy. No better illustration of such an attempt can be found than the one discussed in *Whitehead v. Shattuck* (138 U. S., 146), which involved an Iowa statute providing for an equitable action to quiet the title to land as against a person in possession thereof. This court pointed out that the action of ejectment afforded a full and complete remedy at law and, therefore, the statute was but an attempt to provide an equitable remedy for a situation that was strictly legal.

Another illustration of the same kind of a statute is involved in the case of *Scott v. Neely, supra*. There the statute of Mississippi provided that a creditor without having obtained a judgment at law could exhibit a bill to set aside fraudulent conveyances of property and to subject the property to the satisfaction of the debt, and should have a lien as against the world with the exception

of *bona fide* purchasers before the service of the process. In short, this was a statute authorizing a creditor to collect his debt in equity, and again the court held that the jurisdiction of the federal courts in equity could not be so enlarged, as the complainant had a complete and adequate remedy at law.

It follows that the only inquiry here is whether this Delaware statute creates a new right or remedy equitable in character applicable to a situation for which there was no adequate and complete legal remedy.

(1) The Delaware statute creates a new right, namely, the right to a receivership solely upon the insolvency of a corporation.

The language of the Delaware statute in this regard is as follows:

“Whenever a corporation shall be insolvent the Chancellor, on the application and for the benefit of any creditor or stockholder thereof, may at any time in his discretion appoint one or more persons to be receivers of and for such corporation,” etc.

Although there may be isolated cases in which some courts have appointed receivers of corporations solely on the ground of insolvency, they do not represent the almost universal practice of courts of equity on that subject.

There are frequent cases in which insolvency, coupled with other conditions, such as a dissipation of funds, mismanagement on the part of directors, public interest and other circumstances, has been held sufficient to justify a receivership, but these cases do not proceed upon the condition of insolvency alone.

In *Tardy's Smith on Receivers*, Section 17, it is stated:

"Mere insolvency of the defendant without any other grounds being stated as a cause of action, will not be sufficient for the appointment of a receiver by a court of equity in the absence of a statute allowing the appointment upon a showing of insolvency or imminent danger of such a condition.

Insolvency is, however, most frequently one of several reasons for the appointment of a receiver, but insolvency as a ground for the appointment of a receiver is predicated upon the general doctrine of probable loss; hence, there must be coupled with an allegation of insolvency additional allegations showing the plaintiff's right of recovery or probability of recovery and that such recovery will be wholly or substantially lost or impaired by reason of the insolvency."

In *High on Receivers*, Section 18, it is stated:

"While insolvency of a defendant in possession and against whom a receiver is sought is frequently relied upon by the courts as a ground for granting relief, it is to be observed that insolvency will not of itself warrant a court in appointing a receiver. It must also appear that plaintiff has a probable cause of action against the defendant, and that the benefit to result from his recovery will either be wholly lost or substantially impaired by reason of such insolvency, unless a receiver is appointed."

In re Metropolitan Railway Receivership (208 U. S., 90), indicates that even where public interest and other circumstances showing imminent danger of dissipation of the defendant corporation's property were involved, a receiver would not be appointed except upon the consent of the defendant.

That this right to a receivership upon the sole ground of insolvency is a new right is also clearly indicated in the exhaustive opinion of Judge BRADFORD in *Jones v.*

Mutual Fidelity Co. (123 Fed., 506), a case arising under this Delaware statute.

The right to a receivership is a substantial right and oftentimes constitutes the only means of saving both the creditors and stockholders immense values in the possession of insolvent corporations. The argument that no such relief is permissible as the only and ultimate relief prayed for in a proceeding, is sufficiently answered by reference to the many cases in the federal courts in which that relief only has been requested and granted.

That the right thus created is a right of an equitable nature cannot be successfully disputed. This Court has frequently held that the property of a corporation is of the nature of a trust fund for the benefit of the creditors and stockholders of the corporation, and although something more must appear before the Court will undertake to administer such a trust, yet, when the Court has once taken the property into its possession all the incidents of such fiduciary relationships arise.

In *Hollins v. Brierfield Coal & Iron Co.* (150 U. S., 371), Mr. Justice BREWER, after discussing some of the cases on this subject, states in reference to one of them:

"All that it decides is that when a court of equity does take into its possession the assets of an insolvent corporation it will administer them on the theory that they in equity belong to the creditors and stockholders, rather than to the corporation itself. In other words, and that is the idea which underlies all these expressions in reference to 'trust' in connection with the property of a corporation, the corporation is an entity distinct from its stockholders as from its creditors.
* * * Becoming insolvent, the equitable interest of the stockholders in the property, together with their conditional liability to the creditors, places the property in a condition of trust, first, for the creditors, and then for the stockholders."

This is sufficient to indicate that the administration of the property of an insolvent corporation, if it is once properly taken possession of by the Court, is equitable and not legal in its nature.

That the remedy provided by the Delaware statute is also equitable in its nature is manifest. There is no remedy longer peculiar to equity than the remedy of receivership.

In *Williamson v. Wilson* (1 Bland's Chancery, Md., 418), decided in 1826, it was stated in reference to this remedy:

"It is a power of the Court of Chancery of England which appears to have been very frequently called into action during more than a century past. All the leading principles in relation to it were well established there long before our Revolution and it was then and has ever since been considered there and here as a power of as great utility as any which belongs to a court of chancery, and that it is so will appear very evident from a review of the nature and the variety of the exigencies in which it has been called into action either to prevent fraud, to save the subject of litigation from material injury, or to rescue it from inevitable destruction."

We, therefore, submit that the Delaware statute in question creates a new equitable right and affords therefore an equitable remedy. For these reasons the federal court sitting in equity is fully empowered to enforce its provisions.

(2) The District Court in the District of Delaware has proceeded for many years upon the above principles in the enforcement of this statute.

Oftentimes despite objections based upon the same contentions that are now made by the petitioner, the District Court of the United States for the District of

Delaware has for years proceeded to enforce the statute in question upon the principles above laid down. Instances thereof are to be found in the following cases:

- Wheeler v. Walton & Whann Co.* (64 Fed., 664);
Maxwell v. Wilmington Dental Manufacturing Co. (82 Fed., 214);
Jones v. Mutual Fidelity Co. (123 Fed., 506);
Hitner v. Diamond State Steel Co. (176 Fed., 384);
Adler v. Campeche Laguna Corporation (257 Fed., 789);
Spackman v. Swan Creek Co. (274 Fed., 107);
Hanssen v. Pusey & Jones Co. (the case at bar), (276 Fed., 296).

The only case in which the Circuit Court of Appeals for the Third Circuit has passed on this particular statute is in the case at bar (279 Fed., 488).

In some of the above cases the application was made by a simple contract creditor; in others by a stockholder and in some by both.

The most exhaustive opinion upon the subject is that of Judge BRADFORD, in *Jones v. Mutual Fidelity Co.*, *supra*, an opinion in which he reviews many cases on this subject and discusses the principles involved at length. The suit was brought by a simple contract creditor and was heard on demurrer, but at the hearing the principal objection urged was that the complainant was a creditor who had not reduced his claim to judgment. The Court states at page 516:

“The demurrer does not assign as a cause that it does not appear that the complainants have obtained judgment on their claim. This objection, however, was at the hearing made *ore tenus* in support of the demurrer and also was discussed

in the briefs of counsel. Under these circumstances the objection thus made should be treated in the same manner as if formally assigned in the demurrer."

The Court then proceeds at great length to discuss the objection, and the following quotations from the opinion will indicate that the Court proceeded upon the principles we have endeavored to state.

"The Delaware statute in conferring on the Chancellor authority, solely on the ground of insolvency, to appoint receivers for insolvent corporations and take possession of and fully and finally distribute their assets, provided a purely equitable procedure for the enforcement of equitable rights on the part of creditors and stockholders" (p. 517).

Further:

"Under the settled construction of the Act its provisions apply as well to general and unsecured creditors as to creditors whose claims have been reduced to judgment or otherwise judicially ascertained, or are admitted" (p. 517).

The Court then points out that neither the federal court in Delaware nor the state court, in the absence of said statute, could appoint a receiver on the sole ground of insolvency, and then states:

"While a state law cannot confer jurisdiction on any federal court it may create a substantial right which the proper federal court otherwise possessing jurisdiction may enforce by a proper remedy whether in equity or admiralty, or at law" (p. 517).

After referring to the constitutional right to a trial by jury and the federal statute prohibiting a proceeding in equity where there is an adequate remedy at law and

admitting that legal and equitable procedure may not be blended in a federal court, it is stated:

"And where a state statute creates a right and a remedy for its protection or enforcement and such remedy substantially conforms to the procedure in chancery, it, in the absence of a plain, adequate and complete remedy at law, may be pursued on the equity side of the federal court" (p. 518).

The Court then reviews many cases decided by this Court in support of the above propositions and bearing on the question of what is an adequate and complete remedy at law, and admits that

"Where the direct object of a suit is the judicial ascertainment of the existence and amount of a pecuniary legal demand and the enforcement of its payment by the process of the court in which the suit is brought, the proceeding is essentially an action at law and in a federal court must be so treated regardless of state legislation" (p. 521).

and refers to the cases of *Cates v. Allen* (149 U. S., 451) and *Scott v. Neely*, *supra*, stating that they are in that class, and remarks:

"There is a clear distinction between the exercise of equitable jurisdiction in aid of a legal remedy for the collection of a pecuniary legal demand, and the exercise of equitable jurisdiction in enforcing a purely equitable right by a purely equitable remedy, created by a valid state statute, not in aid of any legal remedy, but wholly independently thereof, though the existence of such equitable right and remedy may presuppose and be dependent on the existence of such pecuniary legal demand. Failure to recognize this distinction has produced some confusion in the cases" (p. 522).

and further

"Where equitable rights and remedies under a statute, founded on or bearing relation to pecuniary legal demands, would be defeated by ex-

hausting the remedy at law on such demands, such equitable remedies cannot be considered as in aid of the legal remedy. Under such circumstances an exhaustion of the legal remedy would practically nullify the remedy in equity, and therefore, if force should be given to the statute, it would be not only unnecessary, but improper, before proceeding thereunder to exhaust the legal remedy. * * * Being a purely equitable proceeding, the constitutional guaranty of jury trial would, of course, have no application" (pp. 522-23).

Further:

"To authorize the appointment of a receiver two things only must be made to appear to the chancellor, namely, that the complainant is a creditor of the corporation and that the corporation is insolvent. If the corporation be shown to be insolvent, no judicial ascertainment of the amount of the pecuniary demand of the complainant is a prerequisite to the appointment of a receiver" (p. 524).

and the Court further remarks:

"It is merely the fact that he is a creditor and not the amount of his demand that must appear to the court" (p. 524).

Further:

"The broad object of the statute is that, in the discretion of the court, the affairs and assets of an insolvent corporation, not included in the exception, may be controlled, managed and disposed of by the Court through a receivership for the benefit of creditors and stockholders; and this object is to be attained, according to the circumstances and exigencies of different cases, either by a temporary assumption by the court of the custody and management of the corporate affairs and assets, or by a complete administration of such affairs and a final distribution of such assets. The statute has thus created and conferred on simple contract creditors as well as judgment

creditors a substantial right of a purely equitable nature and a purely equitable procedure to enforce it. No action at law by a non-judgment creditor nor any legal process on behalf of a judgment creditor, can enforce such a right" (p. 524).

Further:

"An application of the assets of the insolvent corporation to final process at law would be destructive of the right conferred by the statute" (p. 525).

The Court then points out that the statute involved in *Scott v. Neely, supra*, and *Cates v. Allen, supra*, had no such object in view and that it was simply intended to enforce in equity the payment of a particular legal demand. After discussing these cases and the case of *Hollins v. Brierfield Coal & Iron Co., supra*, it is stated:

"But I know of no case in which the proposition, either in terms or in substance, has been advanced that, where the object of the suit is the enforcement of a substantial right in equity created by a state statute, and the exhaustion of a legal remedy would necessarily defeat the object of the suit, such legal proceeding would furnish a plain, adequate and complete remedy for attaining the object of the suit" (p. 527).

The Court reviews cases under analogous statutes, passed upon by other federal courts and concludes that the Delaware statute is clearly a statute which creates a substantial equitable right and furnishes an equitable remedy and, therefore, can properly be enforced in a federal court on its equity side.

These propositions have been adopted by the Circuit Court of Appeals in the Third Circuit in the case at bar, which is now here for review.

In *Adler v. Campeche Laguna Corporation, supra*, the Court states (p. 791):

"The Delaware statute enlarges the jurisdiction of the court of chancery over the appointment of receivers for corporations to include cases where insolvency is the sole ground for the appointment. It not only creates the right but designates the persons entitled to the relief."

(3) Many of the Circuit Courts of Appeal have upheld similar statutes.

In *Darragh v. H. Wetter Manufacturing Company* (78 Fed., 7) the Circuit Court of Appeals for the Eighth Circuit considered certain statutes of the State of Arkansas which provided that any creditor or stockholder of an insolvent corporation might institute proceedings in the Chancery Court for winding up its affairs, and upon such application the court would take charge of the assets of the corporation and distribute them among the creditors, etc.

The bill was brought by a simple contract creditor who had not obtained judgment, the only basis for the proceeding being that the defendant corporation was insolvent. The same objection to the jurisdiction of the court that is involved in this proceeding was urged, and Judge SANBORN considers the matter at length. He points out that *Scott v. Neely, supra*, and *Cates v. Allen, supra*, involve a statute that created no new rights nor provided new remedies, but simply changed the rules of practice in equity. After a review of many cases, he concludes that the following principles are firmly established in the jurisprudence of the United States (p. 14):

"Rights, created or provided by the statutes of the states to be pursued in the state courts may be enforced and administered in the federal courts, either at law, in equity, or in admiralty, as the nature of the new rights may require. *Ex parte McNiel*, 13 Wall., 236; *Cummings v. Bank*, 101 U. S., 153, 157; *Trust Co. v. Krumseig* (decided by

this court at May term, 1896). 77 Fed., 32. An enlargement of equitable rights by the statutes of the states may be administered by the national courts as well as by the courts of the states. Case of *Broderick's Will*, 21 Wall., 503, 520; *Clark v. Smith*, 13 Pet., 195, 202; *Holland v. Challen*, 110 U. S., 15, 25, 3 Sup. Ct., 495; *Frost v. Spitley*, 121 U. S., 552, 557, 7 Sup. Ct., 1129; *Reynolds v. Bank*, 112 U. S., 405, 5 Sup. Ct., 213; *Chapman v. Brewer*, 114 U. S., 158, 170, 171, 5 Sup. Ct., 799; *Gornaleu v. Clark*, 134 U. S., 338, 348, 349, 10 Sup. Ct., 554; *Bardon v. Improvement Co.*, 157 U. S., 327, 330, 15 Sup. Ct., 650; *Cowley v. Railroad Co.*, 159 U. S., 569, 583, 16 Sup. Ct., 127. "A party, by going into a national court, does not lose any right or appropriate remedy of which he might have availed himself in the state courts of the same locality." *Ex parte McNiel*, 13 Wall., 236; *Davis v. Gray*, 15 Wall., 203, 221; *Cowley v. Railroad Co.*, 159 U. S., 569, 583, 16 Sup. Ct., 127."

The Court further states (p. 15):

"Creditors and stockholders had no right, without such a statute, to have a receiver of a corporation appointed, to have its property sold, and to have its proceeds distributed pro rata among its creditors, simply because it was insolvent. The statute created that right."

It is true that the court pointed out certain provisions in the Arkansas statute which seemed to modify the effectiveness of the legal remedy possessed by a creditor, but the decision is principally based upon the ground above mentioned.

In *McGraw v. Mott* (179 Fed., 646) the Circuit Court of Appeals for the Fourth Circuit considered the New Jersey statute, which provided that when a corporation is insolvent "Any creditor or stockholder may by petition or bill of complaint" set out the facts and apply to the Court of Chancery for an injunction and the appointment of receivers.

The jurisdiction of the Court was challenged on the same grounds heretofore discussed. The Court states (p. 651):

"It is urged that the court was without jurisdiction because the complainant had not reduced his claims to judgment in a court of law; that he had a complete and adequate remedy at law by obtaining judgment on his debts against the defendant corporation and suing out execution against its property."

After referring to a number of cases the Court states (p. 653):

"Without entering into an extended discussion of the decisions, we reach the conclusion that in view of the construction put upon the statute by the Supreme Court of New Jersey and its evident purpose, it is not essential to the jurisdiction of the Circuit Court of the United States that the complainant shall be a judgment creditor or have a specific lien on the corporate property."

In *Land Title & Trust Company v. Asphalt Company of America* (127 Fed., 1) the Circuit Court of Appeals for the Third Circuit considered the same New Jersey statute.

The complainant had a lien on some of the property of the defendant corporation, and, therefore, the Court did not find it necessary directly to decide the question of the right of a simple contract creditor to proceed in a federal court of equity, but nevertheless made the following statements (p. 18):

"It is true that, independent of statutory authority, the general equitable jurisdiction of the United States courts does not extend so far as to entertain a suit by a creditor against a corporation, seeking the appointment of a receiver of its business and property and an injunction against the exercise of its corporate franchises,

solely on the ground of insolvency. It is, however, well settled by adjudications of the Supreme Court and subordinate federal courts, that if a state legislature, by a valid law, create a right essentially equitable in its nature, prescribing a remedy for its enforcement substantially consistent with the ordinary modes of proceeding on the chancery side of the federal courts, no reason exists why it should not be pursued in a federal court of equity in the same form as it is in the state courts."

In *Kessler v. William Necker, Inc.* (258 Fed., 654), the District Court of New Jersey again considered the New Jersey statute. The bill was brought by simple contract creditors who were also stockholders, and although the Court discussed the question involved the decision seems to be based upon the ground that the complainants were stockholders as well as creditors, and that the defendant corporation had waived any objection to the jurisdiction. The Court, however, does quote with approval the cases of *Darragh v. H. Wetter Manufacturing Company*, *supra*, and *Jones v. Mutual Fidelity Company*, *supra*.

In *Lion Bonding and Surety Company v. Karatz* (280 Fed., 532), decided in April, 1922, the Circuit Court of Appeals for the Eighth Circuit, in the absence of a statute, appointed receivers at the instance of complainants who were simple contract creditors and against an objection upon that ground. In this regard the Court says (p. 537):

"The second assignment of error, that the plaintiff is not entitled to the equitable relief of appointment of receivers, as he is only a simple contract creditor, without having reduced his claim to a judgment and exhausted his remedy at law, is equally without merit. The facts alleged in the complaint, and which are admitted, are that the company is wholly insolvent, and its property in danger of loss and dissipation by reason of seizures under execution and attachments, and

waste, to the great loss of the creditors, justified the action of the District Court to appoint receivers, without the necessity of useless proceedings at law. *Williams v. Adler-Goldman Comm. Co.*, 227 Fed., 374; 142 C. C. A., 70 (8th Ct.), affirming (D. C.) 211 Fed., 530, and authorities cited in the opinions of this case. As said in *Case v. Beauregard*, 101 U. S., 688; 25 L. Ed., 1004, on like contentions: 'Neither law nor equity requires a meaningless form. "*Bona, sed impossibilia, non cogit lex.*" It has been decided that, where it appears by the bill that the debtor is insolvent and that the issuing of an execution would be of no practical utility, the issue of an execution is not a necessary prerequisite for equitable interference.' "

This case is an instance of the propriety of a receivership upon the allegation of insolvency accompanied by allegations that the property is in danger of loss and dissipation.

The statutes considered in the foregoing cases all relate to insolvent corporations, and those courts have been convinced that statutes similar to the statute of Delaware are properly enforceable in the federal courts.

(4) Cases in the lower courts cited by petitioner.

The petitioner cites eight cases in the federal courts claimed to be authority for an opposite conclusion. (Brief p. 17.) Many of these cases do not apply and an examination of those which possibly are pertinent will disclose the fact that they proceeded upon the doctrine of *stare decisis*. They simply state that the situation is governed by the cases of *Scott v. Neely*, *Cates v. Allen* or *Hollins v. Brierfield Coal & Iron Company*, thus begging the question which is now before this court.

The first case is *United States v. Sloan Ship Yards Corporation* (270 Fed., 613) District Court, State of

Washington. The complainant held a mortgage lien on the defendant's property, but despite this fact the court dismissed the bill evidently on the ground that a receivership was not final relief and that a simple contract creditor could not sue under the authority of *Holins v. Brierfield Coal & Iron Company*.

It is difficult to see how the case was properly decided in view of the above facts.

The next case is *Davidson-Wesson Implement Co. v. Parlin & Orendorff* (141 Fed., 37). In this case the Circuit Court of Appeals for the Fifth Circuit dismissed the bill with a short opinion relying upon the case of *Scott v. Neely*. A Louisiana statute was involved which is elaborate in its provisions, providing for receiverships in various situations, sometimes upon an application of stockholders, sometimes of creditors and sometimes of judgment creditors. If the application is on account of insolvency the statute provides that the complainant must be a judgment creditor. The bill alleged that all the defendants were insolvent. It is possible, therefore, that the complainant did not come within the terms of the statute, although it is further true that other sections of the statute provide that a simple contract creditor can apply where the property has been diverted from corporate purposes, and there were such allegations in the bill. The court designates the bill as a creditor's bill, which seems to be correct as it asked for a judgment for the amount of a debt due the complainant, and for a receivership. Under such a prayer it is possible that the proceeding is governed by the authority of *Scott v. Neely*.

The next case is *Jacobs v. Mexican Sugar Company* (130 Fed., 589). The complainants were stockholders and one of them was a simple creditor. The bill alleged that the defendant corporation was insolvent and that certain preferences had been created, and prayed for a receiver and that the rights of the complainant creditor

and all other creditors should be ascertained and their claims enforced. The bill was based on the New Jersey statute. Judge ARCHBALD in the District of New Jersey held, on the authority of *Hollins v. Brierfield Coal & Iron Company*, that so far as the complainant creditor was concerned there was no jurisdiction. This holding is, of course, at variance with the holding of the Circuit Court of Appeals for the Third Circuit. The court, however, further held that the complainants could proceed as stockholders under the New Jersey statute and, therefore, appointed a receiver.

The next case is *Harrison v. Farmers' Loan & Trust Co.* (94 Fed., 728). In this case the Circuit Court of Appeals for the Fifth Circuit disposed of the proceeding in a very short opinion which does not disclose the facts, except that the complainants were simple contract creditors. The court states that they cannot come into equity to obtain a seizure of defendant's property and its application to the satisfaction of their claims, notwithstanding the fact that a state statute may authorize such procedure, basing the holding upon *Scott v. Neely* and like cases. It seems apparent that this also was strictly a creditor's bill to obtain payment of the particular debts in question.

The next case is *D. A. Tompkins Co. v. Catawba Mills* (82 Fed., 780). No state statute is involved and, therefore, the case does not apply.

The next case is *Morrow Shoe Company v. New England Shoe Company* (57 Fed., 685). This case was decided by the Circuit Court of Appeals for the Seventh Circuit and considered the Illinois statute authorizing the appointment of receivers at the instance of general creditors. The court admits that where a new right is created by a state statute the federal courts will enforce it according to its nature, but, on the authority of *Hollins v. Brierfield Coal & Iron Company*, held that this

particular statute could not be enforced in equity in the federal courts. This case is distinguished by Judge BRADFORD in *Jones v. Mutual Fidelity Company*, heretofore discussed. The court disposed of the proposition involved in the following brief remark (p. 698):

"The bill fails to allege that the plaintiff had prosecuted its claim to judgment, and had issued an execution thereon, and had the same returned *nulla bona*. For this reason the bill of complaint is insufficient within the doctrine of *Scott v. Neely*, 140 U. S., 106, 11 Sup. Ct. Rep. 712, and *Cates v. Allen*, 149 U. S., 451, 13 Sup. Ct. Rep., 883, 977."

The next case is *Atlanta & F. R. Co. v. Western Railway Co.* (50 Fed., 790). The proceeding was brought by three general creditors and the Circuit Court of Appeals for the Fifth Circuit dismissed the bill on the authority of *Scott v. Neely*. It is somewhat doubtful whether any statute was involved, as it appears that although counsel had claimed there was a Georgia statute the court had been unable to find it. In the absence of the provisions of the statute involved it is difficult to determine the bearing to this case.

The last case cited is *Mathews Slate Co. v. Mathews* (148 Fed., 490). This proceeding was brought against two individuals under a Massachusetts statute, which authorized a creditor to proceed in equity to reach property that could not be reached by legal process. Relying upon *Cates v. Allen* the Circuit Court in Massachusetts held that it had no jurisdiction. It is apparent that this was a pure creditor's bill seeking to obtain the payment of a particular debt by the enforcement of the demand against property, that could not be reached at law, and possibly may be governed by *Scott v. Neely* and *Cates v. Allen*.

A review of these cases relied upon by the petitioner shows that they add nothing to the discussion. Those

that apply at all simply rely upon the cases of *Scott v. Neely*, *Cates v. Allen* and *Hollins v. Brierfield Coal & Iron Company*, which we maintain in no way govern this question.

(5) The complainant had no adequate remedy at law and the decision affording him relief was correct.

After having examined the utterances of the lower courts on statutes more or less similar to the Delaware statute, we are forced back to the question of whether or not the statute creates a new equitable right and whether or not the complainant had a full and adequate remedy at law.

That the statute creates a new equitable right and remedy seems to be apparent.

That the complainant had no remedy at law, let alone a complete and adequate one for the relief he sought, is also true. He could have proceeded to procure a judgment for large amounts against the defendant corporation and have called upon the sheriff to levy on any property that could be found, and in the absence of such property to make a return *nulla bona*, but such a course of conduct would clearly not afford him the relief he seeks in this action, but on the contrary would directly defeat it, because the result of such conduct would be to strip the corporation defendant of its property and put it into a situation where it had no property upon which a receivership could act. Therefore, the complainant, together with any other creditors of the defendant corporation and all of its stockholders, would have been deprived of the very valuable right of the continuance of a large going concern under the protection of the Court for the purpose of determining in the first instance whether the defendant could not be so regulated as to be able to go on with its business, or failing that, to insure a general and equitable distribution of its assets. No

process known to the law could accomplish these, or any of these objects, but on the contrary would either defeat them or in a large measure tend to defeat them.

As we have pointed out before, we have been unable to discover any case in this Court that passes on any statute relating to the administration of the affairs of an insolvent corporation by a court of equity.

The reliance of the petitioner seems to be upon the three cases of *Scott v. Neely*; *Cates v. Allen* and *Hollins v. Brierfield Coal & Iron Co.*, *supra*.

The *Hollins* case is not in point, as no statute authorizing the procedure therein involved existed. Three unsecured creditors brought the proceeding against the defendant corporation asking that certain conveyances be set aside; that a receiver be appointed and "the property sold in satisfaction of their claims and that such receiver have authority to collect the unpaid stock subscriptions to be applied also in satisfaction of their claims."

Mr. Justice BREWER pointed out that the complainants were simple contract creditors and stated (p. 379):

"It is the settled law of this court that such creditors cannot come into a court of equity to obtain the seizure of the property of their debtor and its application to the satisfaction of their claims and this, notwithstanding a statute of the State may authorize such a proceeding in the courts of the State."

The statement in regard to a state statute is *obiter*, as no statute is involved in the proceeding and the meaning of such dictum based as it is on the other two cases of *Scott v. Neely*, and *Cates v. Allen*, must be referred to those cases.

The case certainly does not involve any statute authorizing the administration of the affairs of an insolvent corporation.

Turning then to *Scott v. Neely* and *Cates v. Allen*, the other two cases relied upon, it will appear that they both relate to the same statute and that each case involved strictly a creditor's bill, seeking in a single proceeding to procure a judgment on a legal claim, to set aside fraudulent conveyances and to apply the proceeds of the property thus reached to the payment of the particular indebtedness of the complainant, and this against all other creditors.

A creditor's bill is properly defined as follows:

"A bill by which a creditor seeks to satisfy his debt out of some equitable estate of the debtor which is not liable to levy and sale under execution at law, or out of some property which has been put beyond the reach of the ordinary process."

Cyc., Vol. 12, page 5.

From time immemorial the principles surrounding such a proceeding have been technical and fixed. Long before the organization of our Government it was required in such instances in England that a creditor must first exhaust his remedy at law by procuring a judgment and the return of an execution *nulla bona* upon the theory that such a remedy was full and adequate. After having so proceeded, he could then bring a proceeding in equity to reach equitable assets and remove obstacles in the way of the collection of his judgment, the whole object of these proceedings being to satisfy the debt in question.

These principles were adopted in their entirety in the jurisprudence of this country, both state and federal, and the procedure became so technical that not only must the complainant obtain a judgment, but he must obtain a judgment in the particular state or district in which he proposes to bring his subsequent bill to remove the obstacles to the collection of his debt. *National Tube Works Co. v. Ballou*, 146 U. S., 517.

In view of these long standing principles and of the Seventh Amendment to the Constitution of the United States and of Section 723 of the Revised Statutes, possibly it is not surprising that this court in considering the Mississippi statute involved in the two cases in question came to the conclusion that the statute simply operates to blend a proceeding at law with a proceeding in equity, which proceedings were entirely distinct one from the other.

In such a case the statute created no new right. Previous to its enactment the creditor had a full remedy at law and also after obtaining judgment had a full remedy in equity. The statute simply combined these remedies.

Even under these circumstances, in view of the fact that certain equitable rights or remedies were involved at some stage of the proceedings, the question was so doubtful even under such a statute that two able members of this Court, Mr. Justice BROWN and Mr. Justice JACKSON, felt obliged to dissent from the opinion of the Court in the *Cates* case, feeling that that statute should be held to be one that properly enlarged the jurisdiction of the Court. In that opinion it is stated:

"I had always supposed it to be a cardinal rule of federal jurisprudence that the federal courts are competent to administer any state statute investing parties with a substantial right."

However this may be, the Mississippi statute there involved, and the Delaware statute involved in this proceeding are principally remarkable for their dissimilarity. There the provision was for the collection of a debt, here the provision is for the administration of the property of an insolvent corporation; there a judgment for the amount of the debt was to ensue, here no ascertainment of the debt may ever take place; there the debt was to be satisfied out of specific property, here the debt

may never be satisfied; there the procedure was from time immemorial fixed, here no such procedure existed previously.

We confidently submit that whatever decision the Court may come to upon the question here involved, it cannot consider that the case is governed by either *Scott v. Neely* or *Cates v. Allen*.

It is further worthy of remark that in the subsequent case of *Cowley v. Northern Pacific Railroad Co.* (159 U. S., 569), this Court upheld a proceeding in equity in the federal court based upon a state statute, in which case the opinion was written by Mr. Justice BROWN, who dissented in the *Cates* case and in whose opinion the same cases cited in his previous dissenting opinion were relied upon, a fact which seemed to convince Judge SANBORN in the case of *Darragh v. H. Wetter Co.*, *supra*, that this Court at least in a measure had modified its previous holding in the *Cates* case.

This question, therefore, not having been passed upon by this Court, we again point out the importance of the issues involved, the value of the remedies provided by statutes similar to the one in question and the practical necessities of an orderly and equitable administration of the properties of insolvent corporations.

POINT V.

Hanssen is a creditor of the petitioner corporation.

Some claim was made in the courts below and is more or less urged here that Hanssen is not a creditor of the petitioner. It seems to be claimed in the first instance that Hanssen is not a pledgee, but a mere custodian of the notes and, therefore, not entitled to sue. The question of whether he was a pledgee or otherwise of the

notes seems to be a question between Hanssen and Hannevig. The only reason alleged as to why he is not a pledgee, but is a mere custodian, is the fact that the instrument under which the notes were transferred to him states that they must be returned to Hannevig in case Hannevig pays his debt. As this is an incident of every pledge that ever existed so far as we know we will not pursue the question further, except to call the Court's attention to the fact that after these notes were pledged to Hanssen, Hannevig had occasion to pledge such equities as he retained in them to certain insurance companies, the contract in regard to which affair is in the record (p. 349). This contract is signed by Hannevig and there is attached to it a description of the securities in question, wherein Hannevig himself states that these securities

“Are pledged to one Karluf Hanssen, of Haugesund, Norway, along with other collateral, all of which collateral is held by him to a debt of Christoffer Hannevig of approximately Seven Hundred Thousand Dollars”

(record, p. 354). There seems to be no misapprehension between Hanssen and Hannevig as to the nature of this transaction.

In the same connection it seems to be argued that Hanssen had no authority to bring the proceeding because such authority is not mentioned in the power of attorney with which he first came to America. We do not believe that such is the construction of that power of attorney, but whether it is or not is immaterial because before bringing the suit Hanssen returned to Norway and came back armed with further authority to institute the proceeding, all of which appears without contradiction in this record (p. 506).

The result of these transactions was to constitute

Hanssen a holder of these securities as collateral security as between himself and Hannevig, and further to constitute Hanssen a trustee under an express trust, so far as the nine Norwegian concerns go, for whose ultimate benefit the security was held.

As such a trustee under an express trust Hanssen could properly bring any proceeding that the holder of collateral could bring in the federal court. This is made apparent by the 37th rule in equity which, with the force of law, provides that a trustee of an express trust or a party with whom or in whose name a contract has been made for the benefit of another may sue in his own name without joining the ultimate beneficiaries. The contract between Hanssen and Hannevig appears in the record (p. 489). It furthermore appears that these nine Norwegian individuals and corporations have intervened in this proceeding and are now parties complainant, such intervention being under order of July 6, 1921 (record, p. 509) prior to the entry of the order on August 1, 1921, from which the appeal was taken (record, p. 603). It, therefore, appears not only that Hanssen was entitled to bring this bill, being expressly authorized to do so by the rules of this court, but that all the parties interested in said securities are now before the court.

It is further contended that the notes were not due and payable at the time Hanssen began this proceeding, and that the company had a valid defense to them. Neither of these contentions is sound.

Eight of the promissory notes were payable to Christoffer Hannevig, Inc., a New York corporation, by it were endorsed to Hannevig and by him were pledged to Hanssen. In reference to these notes Hannevig is an intermediate holder. The ninth note was payable to Hannevig and by him was endorsed in blank.

First: A pledgee of a note is a creditor of the maker.

Whether or not these notes were overdue when they were delivered to Hanssen, they nevertheless were transferrable by delivery.

National Bank of Washington v. Texas, 20
Wallace, 72;

James v. Chalmers, 6 N. Y., 209;

McSherry v. Brooks, 46 Md., 118.

It is a well known rule of law that the pledgee of a promissory note is under obligation to collect the note and protect it in every way and to apply the proceeds on the debt for which the note is security. If he is negligent in this matter he may be held for his negligence. It, therefore, is not only his right but his duty to do everything he can to protect his status. If, therefore, he could sue the maker of the note to enforce it, it would seem to follow that he must be a creditor of that maker; otherwise, we would have a situation in which a person must and could procure a judgment on a note against the maker and yet not be a creditor of the maker.

Second: The notes are not subject to counterclaim.

The appellant, however, further contends that these notes, having been transferred after maturity, are subject to all equities between the original parties and, inasmuch as Hannevig had misappropriated seven hundred and fifty thousand dollars (\$750,000) belonging to the maker of the notes, no action could be maintained on the notes, the argument seeming to be that such misapplication of moneys by Hannevig *ipso facto* extinguished the notes.

The status of these notes is important and we submit that the objections that have been raised to them are without merit.

No action was ever taken by The Pusey and Jones Company to offset this claim against the notes while Hannevig had them and, in fact, no such effort has ever been made, and it is also true that The Pusey and Jones Company never took any action waiving the tort on Hannevig's part. Whatever equities these notes may be subject to they are not subject to such a set-off or counterclaim in the hands of Haanssen.

(a) A counterclaim or offset relates to the remedy and is governed by the law of the forum.

The petitioner claims in its brief, pages 48 and 53, that this matter of counterclaim is governed by the laws of New York because the transfer took place in that State. This is not sound. It is universally held that a counterclaim is a matter of remedy and whether or not it can be successfully urged must be determined by the law of the forum.

Charuley v. Sibley, 73 Fed., 980.

Cye. Vol. 34, page 648.

It, therefore, appears that this question must be determined by the law of Delaware and not by that of New York.

The cases cited in the opposing brief on pages 49 to 51, on the question of what law governs the propriety of this alleged counterclaim, are so far from the point that they do not require discussion.

(b) A counterclaim is not an equity or defense to which a note transferred after maturity is subject.

The demand which the petitioner claims extinguished these notes is one which manifestly had no relation whatever to the notes themselves. It grew out of an entirely independent transaction.

That such a counterclaim cannot be allowed has been the law in England for nearly a hundred years and has been applied under most extreme circumstances. This doctrine has been followed in most of the States, although a different doctrine prevails in a few, notably in New York. In that State, although there was considerable conflict in the early cases, the question was finally settled by statute.

This principle is referred to in the petitioner's brief as a "technical rule of common law" (p. 51). On the contrary, the doctrine is the fundamental one and the contrary doctrine is and always has been the exception.

This Court early announced its adherence to this proposition.

In *National Bank of Washington v. Texas* (20 Wallace 72), Mr. Justice SWAYNE makes the following statement (p. 88):

"The transferee of overdue negotiable paper takes it liable to all the equities to which it was subject in the hands of the payee, but those equities must attach to the paper itself and not arise from any collateral transaction. A debt due to the maker from the payee at the time of the transfer cannot be set off in a suit by the endorsee of the payee although it might have been enforced if the suit had been brought by the latter."

The above is important not only because it is a pronouncement of this Court, but for the reason that the federal courts do not consider themselves bound by the decisions of the state courts on questions of general commercial law.

Railroad Co. v. National Bank, 102 U. S., 14.

The principal doctrine above discussed was also laid down in *Drexler v. Smith* (30 Fed., 754).

We have found no better discussion of the proposition than in the case of *Cumberland Bank v. Hann* (18 New Jersey Law, 222). The Court states (p. 225):

"That the indorsee of a bill or note, after dishonor, takes it subject to all *equities* existing between the maker and any of the prior parties; that, as against such indorsee, the drawer, acceptor or maker, of any bill or note, may set up any *defence*, which he might have done against the indorser, is language familiar to every *lawyer*, and often repeated in our books; but still the question arises: what constitutes such *equities* or matters of *defence*, as may be set up by the maker of a note, against the payee, or the holder of the note, at maturity?"

and in answer to this question the Court further states (p. 227):

"But a mere *right*, under the statute, to set-off distinct and independent claims, if the payee had thought proper to sue the defendant, was not an *equity* affecting the validity of the note, and following it into the hands of the plaintiffs. Nor, is the right of *set-off*, under the statute, either technically, or in any just and legal sense of the term, a *defence* or *bar* to an action. A matter which may be *set-off*, under the statute, is itself a *cause of action*; and when used by a defendant, as a set-off, it is not, as a *defence* or *bar* to the plaintiff's action. On the contrary it is an admission and in affirmance of, the plaintiff's right of action, and of his title to the money he seeks to recover; and it proposes to liquidate and satisfy the claim, by applying to that end, so much of the defendant's *own money*, then in the hands of the plaintiff, as will be sufficient for the purpose."

There are a multitude of authorities on the subject and a large number of them are cited at Section 725 of Daniels on Negotiable Instruments, to which reference is made in the opinion of the District Court below.

(c) *A promissory note transferred after maturity is not subject to equities between the maker and an intermediate endorser.*

It has been pointed out that many of the notes in question were not made originally payable to Hannevig but to a New York corporation, and that in reference to these notes Hannevig stands in the position of an intermediate holder. Again there is a great weight of authority to the effect that the equities to which an overdue note is subject in the hands of a transferee are only those that existed between the original parties to the note.

Cyc. of Law (vol. 34, p. 748).

Such is the law as laid down by this Court.

In *National Bank of Washington v. Texas* (20 Wallace, 72, *supra*), Judge SWAYNE said in reference to the equities to which a note transferred after its maturity was subject:

"But the protection of this principle is confined to the maker or obligor. It does not apply as between successive takers. Actual notice is necessary to affect them. There is no adverse presumption. Each one takes the legal title, and his equity is equal to that of his predecessors. 'The equities being equal, the law must prevail.' The position of the transferee must be at least as favorable as that of the assignee of a chose in action. There the assignee takes subject to the equity residing in the debtor, but not to an equity residing in a third person against the assignor."

The Supreme Court of California has consistently held to this proposition beginning with the case of *Vinton v. Crowe* (4 Calif., 309). We commend to the Court the opinion in this case as in every respect a model and quote it in full. It is as follows:

"The defense relied on will not avail.

If the plaintiff obtained the note after its maturity, he took it subject to all subsisting equities between the maker and the payee, but not subject to such as subsisted between the maker and any intermediate holder. Such a doctrine has never been countenanced by any authority whatever and would make a rule both dangerous and absurd.

Judgment affirmed, with fifteen per cent. damages."

The same principle is laid down by the Court of Washington. *Reardon v. Cockrell*, (54 Washington, 400). The Court states:

"It is stoutly maintained by the appellants that the rule of law is well established that one purchasing a chose in action after maturity takes subject to the equities in the case, or to equitable defenses which may be interposed to the claim. This rule is undoubtedly true as applied to equities which existed between the maker and the payee of the note, or as to any inherent disqualifications in the note. But we do not think it applies to cases of innocent purchasers of notes, where there would have been no defense to the action as against the original payee."

The same principle is approved in North Carolina and Illinois.

Hill v. Shields (81 North Carolina, 250);

Woolford v. Rusk (145 Ill. Ap., 405).

Many other cases might be cited in support of this proposition and it is submitted that it is a complete answer to the position of the appellant so far as the first eight notes are concerned.

It is further claimed (petitioner's brief, p. 51) that these rules do not apply as the notes were transferred as collateral security.

It is claimed that in the case of *Jenness v. Bean* (10 N. H., 266), decided some eighty years ago, the Court held the doctrine did not apply where the transfer of the notes was as collateral security. This case, which is the only one of the kind that has been discovered, seems to support that contention, but it is undoubtedly founded on the old idea that a pre-existing indebtedness is not a valid consideration for the transfer of collateral security. This proposition has been discarded by numerous decisions in most of the states and particularly by the decisions of this Court which has consistently held from the beginning that a pre-existing indebtedness is a valid consideration for the transfer of collateral security.

In *Swift v. Tyson* (16 Peters, 1), a case which has been followed by many subsequent decisions, Mr. Justice STORY stated:

“We have no hesitation in saying that a pre-existing debt does constitute a valuable consideration in the sense of the general rule already stated as applicable to negotiable instruments.”

It is also alleged (p. 52) that a different doctrine prevails in equity with reference to offsets than that which prevails at law. This is true to a very limited extent.

The brief cites the case of *Rolling Mill v. Ore Steel Company* (152 U. S., 596). The case simply involved the question of whether a garnishee could offset a debt which the principal debtor owed him, or whether he would have to pay the garnishor and lose his claims against the principal debtor, who was insolvent. It would seem to us that such a situation presented a question that could not well have been decided otherwise and one entirely without difficulty. What it has to do with the present case is not apparent.

On page 53 of the brief there is a list of seven more cases alleged to support the petitioner's proposition. The

two New York cases can be discarded because New York is the State which has always held that such an offset is proper at law. The Vermont case was one in which a statute was involved and also the plaintiff was a nominal party only. The Maine citation is erroneous. There is no such case.

The California case simply involved the question of whether judgments could be set-off, where one was in the name of a trustee but the *cestui que* trust was the real party in interest. It was held that a judgment against the *cestui que* trust could be offset.

In the Pennsylvania case the Court held that judgments could be offset against each other as between the parties to the action, but the case is an authority for the respondent because an assignee of part of one of the judgments was protected.

It is submitted that without question the alleged counterclaim is not good as against Hanssen.

Third: The agreement whereby Hannevig undertook not to collect the notes until the Shipping Board mortgage was paid does not affect the situation.

In the first place, an agreement of this sort contained in a separate writing, as this was, and not endorsed on the notes, is not one of the equities to which a note transferred after maturity is subject, for the reason that it is an agreement contradicting the terms of the note itself.

In Daniels on Negotiable Instruments, Section 724, appears the following:

“It is competent against the transferee after maturity to show any equities attaching to the paper itself, but not to show by parole evidence that it was not to be negotiated or not sued on until a certain event, for this would be to contradict the written contract by mere parole.”

See also:

Lively v. Picton, 218 Fed., 401.

It must follow that Hanssen was a creditor of The Pusey and Jones Company within any reasonable definition of the term and regardless of the alleged contract by which the notes could not be collected until the Shipping Board mortgage was paid.

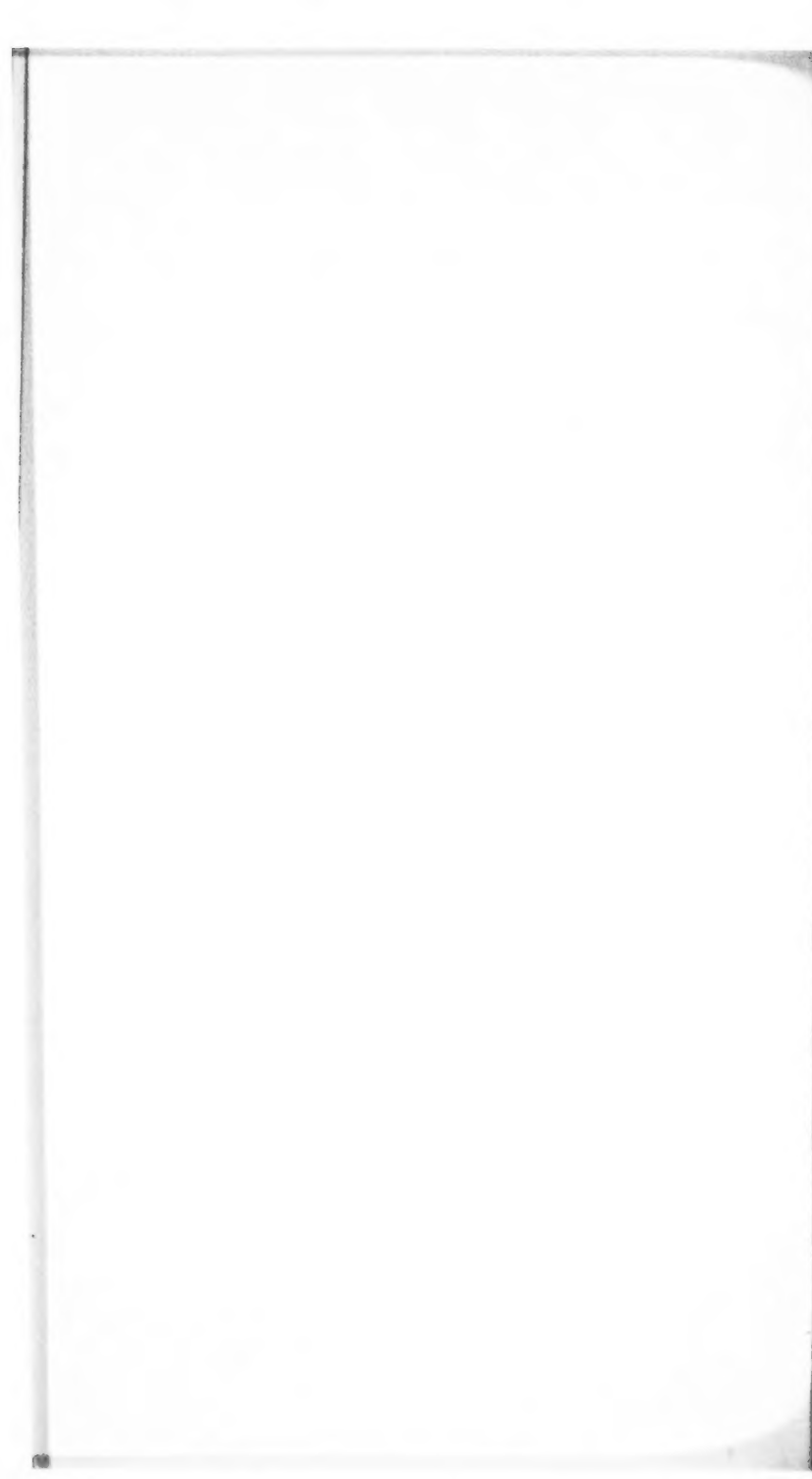
POINT VI.

The decree of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

WILLIAM H. BUTTON,
JOHN P. NIELDS,
WM. G. MAHAFFY,
of Counsel.

Wm. S. Gilchrist



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Supreme Court of the United States

OCTOBER TERM, 1922—No. 431.

THE PUSEY AND JONES COMPANY
(a corporation),
Petitioner,

against

HANS KARLUFF HANSSEN,
Respondent,

and

JACOB PREBENSEN, JR., H. KJER-
SHOW, HARRY BORTHEN, A/S
TROMP, A/S MARITIM, A/S
HAUG, A/S MERCATOR, A/S SOR-
LANDSKE LLOYD, and E. & N.
CHR. EVENSEN,
Intervenors-Respondents.

PETITIONER'S REPLY BRIEF.

Reply to Respondent's Point I.

In Point I the respondent contends that "the Delaware statute justifies *the procedure* herein and the action of the court below" (p. 5).

I.

But the question is not one of procedure in the State courts, but of jurisdiction in the Federal courts.

We may, however, properly observe, that even from the point of view of procedure, the respondent has not succeeded in showing that the Delaware statute has ever been construed, except in the decisions below, as authorizing a simple contract claimant whose claim is disputed by answer demanding a jury trial, to throw the corporation into a receivership. The respondent has been wholly unable to cite a single decision in Delaware giving to this statute a construction in this respect different from the uniform construction of receivership statutes in other States, as set forth in the Third Point of our Main Brief (p. 33).

Indeed, the respondent admits that he *is* claiming an *exceptional* interpretation, for on page 7 he says:

"Whatever may be said as to the meaning of the word 'creditor' in other statutes, these and many other decisions leave no question but that in this Delaware statute the term includes unsecured general creditors as well as judgment creditors."

This assertion of an exceptional interpretation for this Delaware statute cannot bear investigation. In every one of the cases cited by the respondent to support it, plaintiff's claim to be a creditor was established by judgment or admission (thus eliminating any issue at law as to his status), or else he was in possession of a foreclosable lien representing an equitable right in itself.

The only Delaware case from which the respondent has ventured to make a quotation is *Sill v. Kentucky Coal Co.*, 11 Del., Ch. 93; but at pages 35 and 36 of our Main Brief, we have pointed out the obvious distinction between that case and this.

II.

The respondent argues as if any case holding a receivership bill maintainable by other than a judgment creditor was a decision in his favor. The resultant fallacy lies in overlooking the reason for the rule for which we are contending, to wit, that where the complainant's claim to be a creditor raises on the pleadings an issue of fact, the defendant is entitled under the Constitution of the United States—and, indeed, under the constitution of practically every State—to a trial of this common law issue by a common law court and jury, provided he makes seasonable demand therefor. The reason for this rule fails where the claim is admitted, or a jury trial is waived by failure to demand it, or the complainant has a lien foreclosable in equity, *i. e.*, an equitable demand against property. A judgment is only one of several ways of satisfying the defendant's constitutional right, and hence the reason for the rule (15 *Corpus Juris*, p. 1390).

The Delaware Constitution, like that of every other State, guarantees the perpetuation of jury trials of common law demands. In Section 4 of Article I it provides that: "Trial by jury shall be as heretofore." Because of the prevalence of like guaranties in the constitutions of the various States, we have the uniform rule, pointed out in the Third Point of our Main Brief (p. 33) and apparently conceded by the respondent (p. 7), that the word "creditor" in these receivership statutes does not include one who merely claims to be a creditor, but has not established his claim by judgment or admission. *Hence, the fact that the respondent has been wholly unable to find a single*

decision placing a contrary interpretation on this Delaware statute, renders baseless his assertion that it bears an exceptional interpretation.

III.

Great significance also attaches to *the respondent's assertion that this Delaware statute is not exclusively a liquidation statute* (p. 8).

The respondent expressly declares that under this statute receivers may be appointed by the final decree in the suit, not to wind up the corporate affairs, but to manage it as a going concern "as long as the exigencies of the case may require" (p. 8). In other words, under this statute, says the respondent's brief (p. 8), the Chancellor may by final decree replace the board of directors as the business manager

"until circumstances indicate that it is proper to turn them back to the directors and stockholders without the adjustment or payment of debts or any distribution whatsoever of property."

That is an exercise of visitorial power.

The respondent is of necessity driven thus to deny that this is a liquidation statute, because his own bill of complaint does not pray for any liquidation of the corporation or any satisfaction of his alleged debt out of its assets.

The respondent, however, has overlooked that his own claim as to the nature of this statute states one of the very reasons why it is not applicable in the Federal courts.

The respondent does not claim that the final appointment of a receiver for any such purpose of mere continuation of the corporate business, independent of any grant of final relief, is within the inherent jurisdiction of a court of equity. Indeed, his own brief asserts that it is not (p. 28):

"Although there may be isolated cases in which some courts have appointed receivers of corporations solely on the ground of insolvency, they do not represent the almost universal practice of courts of equity on that subject."

And the respondent's brief cites as authoritative the statement (p. 29) in *High on Receivers*, Section 18, that "insolvency will not *of itself* warrant a court in appointing a receiver."

We may take it, therefore, as conceded by both sides that no known head of inherent equity jurisdiction warrants the final appointment of a receiver upon the sole fact that the corporation involved is insolvent. *A fortiori* is this true where, as here, the receivership sought is not for a winding up of a financially dead corporation but for the corporation's indefinite continuance as a going concern, without award of any final relief whatever.

Yet the respondent claims—and the exigencies of his case require him to claim—that this Delaware statute has conferred, even to so extreme an extent, this altogether new and unheard of jurisdiction, not only upon the State Chancellor, but upon the Federal court of equity sitting in Delaware. His brief says (p. 8):

"That the Court (of Chancery) may proceed (under this statute) *upon the sole fact that the corporation involved is insolvent* is equally well-settled, and in fact is *apparent from the terms of the statute itself*."

Hence, the respondent's own proposition is that a new jurisdiction in equity has been created by statute—a jurisdiction far in excess of any inherent chancery jurisdiction, and one which, so far

as Federal courts are concerned, is peculiar to the Federal court sitting in Delaware. A Federal court sitting in Pennsylvania or sitting in New York can exercise no such jurisdiction. The judges thereof would instantly say that they had never heard of any such jurisdiction—that they could find no grant of it in the Constitution of the United States or the Acts of Congress, which constitute the sole source of Federal jurisdiction in equity.

IV.

But, in still another respect, the respondent's own argument in Point I and elsewhere also emphasizes the very thing for which we are contending, viz.: that the Delaware statute, in the words of Judge Lowell in *Mathews State Co. v. Mathews*, 148 Fed., 490, 494, is one "enlarging the jurisdiction in equity rather than (merely) giving equitable rights," and hence is not applicable to a federal court in equity.

In the present case, the respondent's brief admits (indeed claims) that under this Delaware statute a receiver may be appointed by final decree merely for the purpose of indefinitely continuing a going business, "upon the sole fact that the corporation involved is insolvent" (p. 8). The respondent also admits (indeed claims) that, save for this statute, such a decree would be contrary to "*the almost universal practice of courts of equity on that subject*" (p. 28).

Yet that is the very test which this Court has laid down for determining whether a state statute permissibly enlarges a merely personal right in a federal court of equity or unpermissibly enlarges the jurisdiction of the federal court itself.

As said by this Court in *Mississippi Mills v. Cohn*, 150 U. S., 202, 204:

"It is well settled that the jurisdiction of the Federal courts, sitting as courts of equity, is neither enlarged nor diminished by state legislation. * * * The equity jurisdiction conferred on the Federal courts is the same that the High Court of Chancery in England possesses; is subject to neither limitation nor restraint by state legislation, and is uniform throughout the different States of the Union. * * * That jurisdiction, as has often been decided, is vested as a part of the judicial power of the United States in its courts by the Constitution and acts of Congress in execution thereof."

V.

That this Delaware statute as interpreted by the respondent in his Point I creates a new jurisdiction in the court, is still further emphasized by the respondent's contention that a proceeding under it is *not* "a creditor's bill" as that term is used in equity jurisprudence—and, specifically, that this very suit is *not* a creditor's bill.

Thus, at page 47 the respondent's brief claims that *Scott v. Neely* and *Cates v. Allen*, do not control this case, because they "involved strictly a creditor's bill," whereas in the present case "no ascertainment of the debt may ever take place," "the debt may never be satisfied," and, as to the procedure, "no such procedure existed previously" (respondent's brief, pp. 48, 49).

Thus, in order to find a loop-hole for distinguishing the *Scott* and *Cates* cases, the respondent denies that either the statute or his own complaint is within so familiar a head of equity jurisdiction

as a creditor's bill (p. 47); and he asserts instead that the statute creates something brand new—brand new in a number of respects:

(1) Brand new, in that it entitles to a final decree for a receiver, a person merely asserting a simple contract claim although by the decree "no ascertainment of the debt may ever take place," and the debt "may never be satisfied" (respondent's brief, pp. 48,49)!

(2) Brand new, in that "no such procedure existed previously" (respondent's brief, p. 49)!

(3) Brand new, in that such a decree is contrary to "the almost universal practice of courts of equity on that subject" *i. e.*, appointment of receivers (respondent's brief, p. 28)!

(4) Brand new, in that heretofore in equity "insolvency will not of itself warrant a court in appointing a receiver" (respondent's brief, p. 29)!

(5) Brand new, in that the final decree to be entered is not one for liquidation or winding up, but for the indefinite continuance of the corporation as a going concern and conduct of its affairs under a receiver as general manager "until circumstances indicate that it is proper to turn them back to the directors and stockholders without the adjustment or payment of debts or any distribution whatsoever of property" (respondent's brief, p. 8)!

That this is a brand new jurisdiction is obvious on the respondent's own analysis of it.

The respondent pays too high a price for the privilege of distinguishing the *Scott* and *Cates* decisions by this Court.

VI.

Finally, an examination of the Delaware statute itself shows that it is in terms the creation of a new jurisdiction. It is true that the statute professes to be "for the benefit of any creditor or stockholder"; but creditors and stockholders, like the poor, we always have with us. What is new about the statute is its grant of powers to the Chancellor. The whole section and the next succeeding section are merely an enumeration of powers for the first time conferred upon the Chancellor.

If, as has been repeatedly held by this Court, the limit of the jurisdiction of the federal courts of equity is the equity jurisdiction exercised by the High Court of Chancery in England, the powers created by this statute cannot be anything but a new jurisdiction.

Reply to Point II.

In his Point II (p. 10) the respondent argues that

"the appointment of the receivers in this proceeding was well within the discretion of the District Court."

Again we point out that the question is not one of discretion but of jurisdiction. We repeat what we said on pages 59 and 60 of our main brief that the grievance of the Pusey & Jones Company is that, without due jurisdiction and process of law, it has been deprived of the control of its own affairs to the irreparable damage of itself and its estate. The disastrous consequences of the appointment of these receivers are obvious enough. Up to that time, substantially all of the important stock and creditor interests (except this alleged assignee of Hannevig) were united in policy and

the Company was successfully conducting its affairs and was able to continue to do so (Rec., pp. 150, 151, 345-6, 371, 363-5). They had entered into an agreement, dated March 18, 1921, which appears at page 65 of the Record and which was approved and put into effect by order of the District Court for the Southern District of New York entered in the bankruptcy of Hannevig and Hannevig, Inc. (Rec., p. 358). This order stated the purpose of the agreement and of the Court to be as follows (Rec., p. 358) :

"The Court after due deliberation, being of the opinion that the interests of this estate and of all other parties require a prompt, just and equitable disposition of all claims of the Pusey & Jones Corporation against the United States Government and the United States Shipping Board and the Emergency Fleet Corporation, and the Court finding further that the plans proposed to be carried out pursuant to said agreement should accomplish such a disposition of said matters."

Pursuant to this order and the agreement approved thereby, a new board of directors was appointed consisting of representatives of the principal interests; and thus the affairs of the Pusey & Jones Company were placed under the common control of all the principal legitimate interests therein and continued to be so conducted until the appointment of these Delaware receivers disrupted this beneficent plan for the working out of the affairs of the Pusey & Jones Company without a formal receivership.

It is not a little significant that this desirable arrangement was struck down by one who stands in the shoes of Hannevig and who is seeking to take a technical advantage of the assignment in order to avoid the enormous offsets which the corporation has against that fugitive.

Reply to Point III.

It is not a little significant that when the respondent's brief undertakes to argue "the question of the *jurisdiction* of a Federal court to proceed under the Delaware statute," it devotes its initial Point on that subject to alleged grounds of jurisdiction not considered or acted upon by the courts below (p. 12).

I.

The first of these alleged grounds is that "the respondent was a stockholder" (p. 12).

This assertion is rested by the respondent's brief on the statement that "the bill alleges that Hanssen is the owner of 7,200 shares of the preferred stock" of the Company (p. 12).

The respondent seemingly assumes that his mere *claim* to be a stockholder, like his mere claim to be a creditor, in and of itself gives a Federal court of equity jurisdiction under the Delaware statute, if the corporation be in fact insolvent. The respondent entirely ignores the fact that the answer of The Pusey & Jones Company contains the plump denial "that complainant is or ever has been a stockholder of respondent corporation," and the plump denial that these certificates, "were ever transferred or assigned to the complainant" or "ever became his property" or "that he is the holder or owner of said shares of stock" (Rec., pp. 139, 140). His claim to be made a stockholder was left undetermined (Rec., pp. 521, 650) and this Court will not undertake to determine this question.

It is apparent that the refusal to transfer the stock was not an arbitrary one. The endorsements of the certificate, moreover, were not even stamped and were void as a transfer by the law

of New York where the delivery was made to Hanssen.

Other objections to that claim were numerous, and neither of the lower courts was willing to venture its decision on any such uncertain basis.

Hanssen is now asking this Court to accept the unsustained allegation of the bill rather than the fact and thus to substitute a ground of jurisdiction and discretion, on which the orders below were not rested. But this Court is proceeding herein merely as a court of review. It is not hearing an application *de novo* for the appointment of receivers. It is merely reviewing the jurisdiction which the courts below asserted.

As this Court said in *Brown v. Fletcher*, 237 U. S., 583, in reversing the orders below (p. 587):

"As this case is one over which the action of the court below is made final by the statute, we are of opinion that its refusal to decide the case on the merits because of an erroneous conclusion as to want of power as a Federal court to do so ought not under the circumstances here disclosed to be made the basis by which this court would perform a duty which the statute contemplates should be discharged by the court below."

And, again, in *Wm. Cramp Sons v. Curtiss Turbine Co.*, 228 U. S., 645, this Court said (p. 651):

"When the merits are heard we will be virtually exerting the powers of a court of first instance, since we will be called upon, not to review the action of a court below, organized conformably to law, but to decide, virtually in the exercise of original jurisdiction, questions which the law contemplated should be previously passed upon by an inferior court lawfully constituted."

To the same effect are:

National Brake Co. v. Christensen, 254 U. S., 425, 432;
Meccano, Ltd. v. Wanamaker, 253 U. S., 136, 142;
Lutcher & Moore Lumber Co. v. Knight, 217 U. S., 257, 267.

The respondent's brief says (p. 17) that even though the courts below did not recognize Hanssen as a stockholder, the discretion which they exercised would not have been affected if his alleged status as a stockholder had been the sole possible ground of jurisdiction.

On the contrary, this would make all the difference in the world. If a corporation is insolvent the preservation of its assets by a receivership for equal distribution among its creditors may be a matter of urgent necessity in the creditor's interest; but seldom, if ever, can a stockholder have any real interest, merely because of its insolvency, in taking the corporation out of the control of its stockholders and placing it in the hands of its creditors. A stockholder applying for a receivership merely because of insolvency is a *rara avis* indeed, where no personal liability is involved. The merely theoretical character of his interest would be bound vitally to affect the court's discretion in appointing a receiver *pendente lite*.

II.

The importance of these considerations is evidenced by the fact that Hanssen's own proof speedily contradicted the allegation of his complaint that the 7,200 shares had been "sold" to him and had become "the property of complainant" (Rec., p. 9). The alleged documents which he himself produced in connection with his rebuttal

affidavit (Rec., p. 482) show that he had no beneficial interest whatever in the certificates but was merely acting under a power of attorney from certain Norwegian interests (Rec., p. 495), which power of attorney gave him no authority to hold the stock, either as owner or pledgee. Under this power of attorney he made, as his rebuttal affidavit alleges, an agreement with Hannevig whereby Hannevig handed to him these shares as security for the payment of Hannevig's obligations to Hanssen's principals; but Hannevig expressly reserved the right to sell "the deposited values" "free from any encumbrances," and for this purpose to have "the deposited values" "delivered" back to him, the sole condition of this reserved right being that he pay his obligations to Hanssen's principals (Rec., p. 489).

Thus, Hanssen and his principals have no right to sell the securities or to transfer them, and his principals could obtain that right only as a result of due foreclosure on the security. There is no proof or allegation that Hannevig has defaulted under this agreement or that his principals have acquired a right to foreclose or have foreclosed.

Obviously, under these alleged papers produced by Hanssen himself, these certificates were and still are the property of Hannevig and Hannevig in no way authorized Hanssen to become the "stockholder" in his place.

Contrast the actual contents of this alleged document with the following assertion in the respondent's brief (Rec., p. 13):

"It appears from the affidavits that this stock being owned by Hannevig was delivered to Hanssen as collateral security for a large indebtedness; and it was indorsed for transfer. Holding these certificates, Hanssen un-

doubtedly had the right to such a transfer and to the issue to him of new certificates in his name."

The very contrary is the fact, on the face of Hanssen's own papers. Hanssen is not a pledgee at all, but a mere custodian. Not only was he given no right by Hannevig, the owner of the certificates, or by his own principals, to transfer these certificates to his own name, with the consequent facilities for misappropriation and confusion, but the rights which Hannevig expressly reserved were utterly inconsistent with such a right of transfer prior to default and foreclosure. A transfer to Hanssen's name would cut off Hannevig's expressly reserved right of disposition, for his title and power to make delivery would be at the mercy of Hanssen and the stock would become subject to the personal obligations of Hanssen and his principals.

In *Lippman v. Kehoe Stenograph Co.*, 98 Atl. (Del. Ch.), 943, pages 946, 947, it was held:

"When a stockholder assigns in blank his certificate of stock not having sold the same, and delivers it to another, not a purchaser, but with no intention on the part of the transferor, or of the person to whom the certificate was delivered, that the interest of the transferor in the stock should terminate, and no transfer of the stock has been made on the books of the company, the stockholder does not thereby cease to be the owner of the stock in his own right, or disqualified to be a director of the company."

"An assignment in blank may, or may not, terminate the interest of the assignor in the stock, depending on the purpose with which it was done, and no authority is cited to the contrary."

Under the Delaware statute set forth on page 57 of our Main Brief, a pledgee of stock may not vote thereon unless the pledgor has expressly authorized him to do so. There is no proof here that Hannevig has ever given Hanssen that power.

In *Spreckels v. Nevada Bank*, 113 Calif., 272, there was involved a statute of California somewhat similar to the statute of Delaware set forth on page 56 of our Main Brief, which provides that "whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer." It was held, to quote the headnote:

"A pledgee of the stock of a corporation, when the contract is silent upon the subject, has no right to have the stock transferred to his name before maturity of the debt; and an injunction will lie at suit of the pledgor to prevent such transfer. A transfer of stock upon the books of the corporation is not essential to the creation of a valid pledge of the stock, but the pledgee has the right to cause a proper entry of the transaction between himself and his pledgor to be entered upon the books of the corporation for his protection, under section 324 of the Civil Code, though he is not authorized to divest the pledgor of the rights incident to his ownership of the pledge, by surrender and cancellation of the pledged certificate, and the issuance of a new certificate in the name of the pledgee."

Even in states where there is no statute similar to that of Delaware preventing a pledgee from having an absolute transfer on the books of the corporation, the pledgee is not entitled to a transfer of the stock to his own name, even though it was indorsed in blank when pledged, *where there*

is anything in the agreement of pledge which is inconsistent with thus depriving the pledgor of ownership of record or of the power of disposition (14 Corpus Juris, 726).

III.

The respondent's further argument that even if Hanssen was not entitled to become a stockholder of record, he was, nevertheless, a "stockholder" within the meaning of this Delaware statute, is merely a gratuitous assumption.

This statute is extraordinarily drastic and a most unprecedented innovation upon the common law. It is inconceivable that merely because one stockholder out of many has pledged his stock, the pledgee may throw the corporation into a receivership of indefinite duration, irrespective of the wishes of the actual stockholders. Such an interpretation of the statute would unsettle the security of all investments in Delaware corporations, and would throw open the door to undreamed of abuses and machinations.

The cases cited by the respondent are merely to the effect that delivery of a certificate of stock indorsed in blank passes title as between the parties when delivered with that intention. But the question here is not between Hanssen and Hannevig, but between Hanssen and the corporation; and the respondent's very concession (p. 14) that until a transfer upon the books the corporation does not lose any lien which it may have against the stock in the transferor's hands, shows that as regards the corporation a mere delivery of certificates indorsed in blank does not change the transferor's status as *the* stockholder.

The cases of *Reinhardt v. Interstate Telephone Co.*, 71 N. J. Eq., 70, and *O'Grady v. United States*

Telephone Co., 71 Atl., 1040, are not in point because there the complainant was the full owner of the stock—not merely a custodian or pledgee; and his right to a transfer was not questioned.

Cases merely dealing with the right of a pledgee of stock to protect the value of his security as against misappropriation of corporate funds, are not in point. The question here is solely whether Hanssen is a "stockholder" within the Delaware statute—not whether he has certain remedies to protect the value of the collateral in the event of a misappropriation of the corporation's assets.

IV.

Finally, no case has been cited by the respondent, and we can find none, holding that a stockholder has the right to apply to a Federal court in equity for the appointment of a receiver, not for the final relief of liquidation, but solely (to quote the Respondent's Brief, p. 8) "until it is proper to turn them (the assets) back to the directors and stockholders without the adjustment or payment of debts or any distribution whatsoever of property." This is the nature and object of Hanssen's bill, as defined and asserted by himself (see his Points I and IV).

As shown on pages 37-41 of our Main Brief, no Federal court in equity has, or can be given by State legislation, jurisdiction to entertain a bill which seeks merely to secure a receivership for its own sake.

In *Jacobs v. Mexican Sugar Co.*, 130 Fed., 589, the principal case cited by the respondent, the object of the bill, as disclosed in the sentence of the opinion immediately succeeding that quoted by the respondent, was that the Court should "decree

the dissolution of the corporation and to wind up its affairs." So, likewise, in *Darragh v. Wetter Mfg. Co.*, 78 Fed., 7, and in *Kessler v. Wm. Necker, Inc.*, 258 Fed., 651, the objects of the bills were to secure dissolution, liquidation and distribution.

Jurisdiction for such a purpose falls under a well-known head of equity jurisdiction, for, as said in *Graham v. Railroad*, 102 U. S., 148, "when a corporation becomes insolvent, it is so far civilly dead that its property may be administered as a trust fund for the benefit of its stockholders and creditors." But this is a far cry from a case where the object of the bill is not to declare the corporation civilly dead, but to continue it indefinitely as a live and going concern under the control of a receiver rather than of the board of directors.

V.

The further claim that the jurisdiction of the courts below can be upheld because the United States Shipping Board Emergency Fleet Corporation was allowed to intervene, is without any possible merit.

It has already been briefly answered on pages 5 and 6 of our Main Brief.

The respondent overlooks the fact that the intervention of the Shipping Board did not occur until two months after the entry of the decree of the District Court and after the transcript had been filed with the Circuit Court of Appeals. The decree appealed from was filed August 1, 1921 (Rec., p. 603); the petition for appeal and the order allowing appeal were filed August 22, 1921; the transcript of the record was certified and filed on September 30, 1921, and citation issued September 1, 1921 (Rec., pp. 617, 626, 620); but the Shipping

Board's petition for leave to intervene was not presented until October 8, 1921 (Rec., pp. 632, 626), and the order allowing intervention was dated October 8, 1921, and was not entered and conferred no right *nunc pro tunc* (Rec., p. 635).

No reference to the Shipping Board appears in the decision of the Circuit Court of Appeals (Rec., p. 637) or in its mandate (Rec., p. 653); and its opinion contains no reference to the Board's intervention.

The respondent argues that in a class action, "if the original complainant cannot qualify, the proceedings are perfected by the intervention of one of the prescribed class who can qualify" (p. 21). However this may be, it has no application to a case where such intervention occurs *after* the entry of the decree and of the order allowing appeal therefrom and after filing the transcript on appeal (*Foster Federal Practice*, 6th Ed., Vol. IV, p. 3836). The validity of the decree must rest on the jurisdiction existing when it was entered; and the order allowing the appeal transferred the case to the Circuit Court of Appeals. Intervention thereafter could add nothing to the validity of the decree.

In *Mail Co. v. Flanders*, 12 Wallace, U. S., 130, it was held (p. 135):

"Where the court is without jurisdiction it is in general irregular to make any order in the cause except to dismiss the suit."

In *Elliott v. Peirsol*, 1 Peters, 328, it was held (p. 340):

"Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is

regarded as binding in every other Court. But, if it act without authority, its judgments and orders are regarded as nullities. *They are not voidable, but simply void.*"

In Third Street & Suburban Ry. v. Lewis, 173 U. S., 457, it was held, *per* Chief Justice Fuller (p. 460):

"If it does not appear at the outset that the suit is one of which the Circuit Court at the time its jurisdiction is invoked could properly take cognizance, the suit must be dismissed; and lack of jurisdiction cannot be supplied by anything set up by way of defense."

In Dickinson v. Consolidated Traction Co., 114 Fed., 232; affirmed 119 Fed., C. C. A., 871, certiorari denied 191 U. S., 567, it is stated (p. 242):

"This court cannot permit a bill to be amended in a case over which it has no jurisdiction. Jurisdiction must affirmatively appear at every stage of the case."

Reply to Point IV.

I.

The respondent presents an argument *in terrorem* that the consequence of determining lack of jurisdiction in this case will be serious, because the State and Federal courts of Delaware "for decades have undertaken to proceed under this statute in the administration of the affairs of insolvent corporations organized in the State of Delaware."

For reasons already stated, we fail to see that any of those decisions would be adversely affected by upholding the point now made by this defendant. But whether this be so or not, this Court will not overlook the serious consequences of opening a way to break up the uniformity of Federal

equity jurisdiction throughout the United States and to circumvent the constitutional line of demarcation therein between legal and equitable demands.

At page 45 the respondent's brief says:

"He (Hanssen) could have proceeded to procure a judgment for a large amount against the defendant corporation, and have called upon the sheriff to levy upon any property that could be found."

What more complete demonstration do we need that the plaintiff's fundamental demand is merely pecuniary, constituting a familiar cause of action at law; and that his choice of forum represents merely a choice between methods of collection?

If a State can enlarge the jurisdiction of a Federal court in equity, by creating new rights in the plaintiff, it can also diminish that court's jurisdiction by creating new rights in the defendant. Heretofore this has not been deemed permissible.

Payne v. Hook, 7 Wall, 425, 430;

McConichay v. Wright, 121 U. S., 201, 205.

The respondent argues that the State Legislature has created a new right in the complainant. Even so, it would not follow that thereby the State Legislature could take away an old right which the Constitution of the United States and the Acts of Congress have guaranteed to a defendant in a Federal court of equity.

The respondent dwells on the imagined hardship to himself. The court must also consider the hardship upon the great body of genuine creditors and stockholders who oppose this receivership and whose rights are represented by the cor-

poration. Chief among those rights is the guaranty of the United States Constitution that in a Federal court their corporation shall not be taken out of the hands of their appointed representatives, on the mere say-so of one claiming to be a simple contract creditor, without a jury trial of his claim.

II.

The respondent claims that the Delaware statute has created a new right.

If that be true, it still would not follow that the statute has not also created a new jurisdiction. Indeed, the creation of a correspondingly new jurisdiction would be the presumption.

It also does not follow that, merely because the right is new, the possessor of it can enforce it in a Federal court of equity in Delaware. It still is necessary to examine the nature and content of this alleged new right and of the corresponding jurisdiction which it imports.

We have already made this analysis in our reply to Point I of the respondent's brief; and any extended repetition here is unnecessary.

Before such an alleged new right can be enforced in a Federal court of equity in Delaware, the following conditions must be met:

1. The exercise of the new right must be consonant with the old rights of the defendant under the fundamental law governing the Federal court, to wit: the Constitution of the United States and the Acts of Congress in execution thereof.

2. The line of demarcation in the Federal courts between law and equity cannot be obliterated by converting a common law

pecuniary demand into a new equitable right or by adding to it a new equitable remedy.

3. The uniformity of Federal equity jurisdiction throughout the different States of the Union cannot be broken in upon by State legislation, purporting to confer upon the State courts a new head of equity jurisdiction.

4. Under the Constitution of the United States and the Acts of Congress in execution thereof, the equity jurisdiction conferred on the Federal courts is only that which the High Courts of Chancery in England possessed when the Constitution took effect. That jurisdiction may be neither enlarged nor diminished by State legislation.

Any State legislation which creates a new right overstepping these limitations necessarily works, when applied to a Federal court, an unpermissible enlargement of jurisdiction.

III.

Under his Point IV, the respondent denies that this is a creditor's bill (p. 47). He himself asserts that the final decree which his suit seeks, is contrary to "the almost universal practice of courts of equity on that subject"; *i. e.*, on the appointment of receivers (p. 28). He himself contends that, until this statute, the Federal court in Delaware had no power to entertain a bill for "a receivership upon the sole ground of insolvency" (p. 29). He himself defines his bill as seeking, not final relief by way of liquidating a financially deceased corporation, but rather a final decree merely substituting indefinitely a receiver for the board of directors as the general manager of a going business concern "until circumstances indicate that it is proper to turn them (the assets) back to the directors and stockholders without the adjustment or payment of debts or any distribution whatso-

ever of property" (p. 8). He himself claims that just such a decree is contemplated by this Delaware statute (p. 9); and that "the Delaware statute enlarges the jurisdiction of the Courts of Chancery over the appointment of receivers of corporations," so as to permit the entertainment of a bill for so anomalous a decree (p. 8). And finally, in the effort to distinguish the *Scott* and *Cates* decisions by this Court, he says (p. 48):

"The Mississippi statute there involved, and the Delaware statute involved in this proceeding are principally remarkable for their dissimilarity. There the provision is for the administration of the property of an insolvent corporation; there a judgment for the amount of the debt was to ensue, *here no ascertainment of the debt may ever take place*; there the debt was to be satisfied out of specific property, *here the debt may never be satisfied*; there the procedure was from time immemorial fixed, *here no such procedure existed previously*."

Comment seems scarcely necessary. Surely a Federal court of equity must enlarge its jurisdiction beyond all known limits if it is to entertain a bill brought by one who merely says he is a creditor, and solely for the appointment of a receiver to continue a going business in place of the corporation's board of directors, and on the distinct understanding that "no ascertainment of the (alleged) debt may ever take place," "that the (alleged) debt may never be satisfied," and that by a procedure which never "existed previously" the suit will reach a decree which does "not represent the almost universal practice of courts of equity on that subject" (p. 28)!

We need not dwell on how disastrous such a

new jurisdiction would be to the rights of the corporation and of genuine creditors and stockholders under the Constitution of the United States and otherwise; or how it would throw open the door wide to improper and oppressive suits, and place a premium on ulterior and predatory motives.

IV.

The cases cited by the respondent under his Point IV hold nothing at all against our contention. Some of them have already been distinguished in our Main Brief at pages 18-23. Of the others we make the following observations:

Wheeler v. Walton & Whann Co., 64 Fed., 664, bears on the point in no way. Receivers had previously been appointed for an insolvent corporation; but at whose instance, under what circumstances, and for what objects do not appear.

Maxwell v. Wilmington Dental Mfg. Co., 82 Fed., 214, is equally meaningless in this connection. It simply involved the amount of the receiver's compensation.

Hitner v. Diamond State Steel Co., 176 Fed., 384, touches this subject in no way. The only thing involved was the distribution of assets. So far as appears, the prior appointment of receivers had been on grounds recognized from time immemorial as within elementary jurisdiction.

Adler v. Campeche Laguna Corp., 257 Fed., 789, was not a suit by a creditor at all.

Spackman v. Swan Creek Co., 274 Fed., 107, was not a suit by a creditor at all.

We do not know how the respondent's counsel can justify even to himself the citing of these cases immediately after the statement that (p. 31):

"Oftentimes despite objections based upon

the same contentions that are now made by the petitioner, the District Court of the United States for the District of Delaware has for years proceeded to enforce the statute in question upon the principles above laid down."

V.

Elsewhere in his brief the respondent says, "Many Circuit Courts of Appeal have upheld similar statutes" (p. 37).

But the question is not as to upholding the statute, but as to a Federal court exercising jurisdiction under it in circumstances like the present.

The *Darragh* and *McGraw* cases we have already distinguished on pages 18 and 22, respectively, of our Main Brief. Of the *McGraw* case we add these additional grounds of distinction, to wit: That the New Jersey statute there involved is one which on its face contemplated solely the liquidation and winding up of the affairs of the corporation, and the bill of complaint sought that relief. From time immemorial a court of equity has had general jurisdiction to wind up and bury a financially dead corporation. Furthermore, in that case the defendant had admitted the allegations of the bill of complaint on which the receiver had been appointed.

In *Land Title & Trust Co. v. Asphalt Co.*, 127 Fed., 1, the complainant was a trust company holding a general mortgage on the defendant's property. The plaintiff therefore had an equitable right to start with—to wit, its right of foreclosure. The enlargement of the incidents of such an equitable right by state legislation presents no question analogous to that here.

In *Kessler v. Wm. Necker, Inc.*, 258 Fed., 654,

the complainants were stockholders; the bill sought a final liquidation and winding up; and its allegations were admitted by the answer.

Reply to Respondent's Point V.

I.

This entire Point in the respondent's brief is irrelevant.

The defendant's answer expressly denies that Hanssen is a creditor in any sum whatever or that he is the owner of the notes or that there is any sum due upon them. It denies every claim and equity asserted by him and sets up various cross-demands (Rec., pp. 140 *et seq.*).

The issues thus raised must be ultimately tried. The respondent claims that those issues are properly presentable and triable in this action in a Federal court of equity, because of the Delaware statute. The defendant claims that they are not. Hence, to say that the statute is applicable because "Hanssen is a creditor of the petitioner corporation," is to beg this question. The respondent's brief proceeds in a circle. It argues, in effect, that the court has jurisdiction to determine that he is a creditor because he is a creditor.

Furthermore, the so-called evidence that Hanssen is a creditor is simply his own *ex parte* statements, not yet subjected to any cross examination, and certain alleged documents which he has produced, the authenticity, completeness and efficacy of which the defendant not only does not admit but has put in issue by its answer (Rec., pp. 140, 148).

For example, to illustrate the extent to which these *ex parte* statements of Hanssen are chal-

lenged, we refer to the affidavit of Hartwell Cabell, a director of the Pusey & Jones Company and a representative of the Superintendent of Insurance of the State of New York, wherein he says that on February 28, 1921, he learned from the Superintendent of Insurance that three insurance companies appeared on the books of Hannevig & Co., Inc., (Hannevig's *alter ego*), as depositories in the sum of about \$1,700,000; that these deposits had been secured by Hannevig by various assignments of stocks and securities; and that (Rec., p. 344):

"These assignments had been made at various dates. Amongst such assignments one appeared under date of October 14, 1920, whereby certificates Nos. 4, 10 and 18 of The Pusey and Jones Company, representing respectively, 5,000, 2,000 and 200 shares of the preferred stock of said company, were transferred and assigned to the three said insurance companies, together with nine promissory notes of The Pusey and Jones Company, amounting in the aggregate to \$650,000, said assignments being subject to a prior pledge of said stock and notes to one, Karluf Hanssen, a Norwegian citizen. I attach hereto a copy of said assignment and the papers thereto attached, making them a part of this affidavit, the same being marked 'Exhibit A.' According to my information the property covered by this assignment is the identical property, both as to stock and notes, which is alleged in the bill of complaint herein as belonging to the complainant."

Obviously, if these statements are true, then Hanssen's *ex parte* statements are not true, and at best he would be but the representative of a pledgee of Hannevig's alleged equity in these securities.

These facts all show that Hanssen's claim to be

a creditor presents an issue to be tried. Hence, the question before this Court is whether that issue can be tried in this suit.

II

Furthermore, the respondent ignores the fact that he himself has sued in equity and hence must accept the burdens of the doctrine of equitable set-off. He has sued in equity in order that his own claim should not be judged by the common law and yet he insists that the defendant's claim shall be so judged.

The facts bring this case fully within the equitable doctrines of set-off. The nine notes are dated, respectively, in August, September and October, 1917. The last one for \$300,000 was drawn to the order of Christoffer Hannevig personally and was endorsed by him in blank. The other five were drawn to the order of Christoffer Hannevig, Inc., and were endorsed by Hannevig in blank as president of the corporation (Rec., pp. 33-42).

The respondent claims that as to these five notes the maker (the Pusey & Jones Company) has no set-off against him because Hannevig was only an intermediate party (p. 56); but the respondent overlooks that Hannevig, Inc., was merely the *alter ego* of Hannevig since Hannevig owned the majority of its stock and was its president and was conducting a banking business in its name (Rec., p. 432, 412). We cannot find among the complainant's affidavits any denial of this allegation in the defendant's answer (Rec., p. 147):

"That eight of the nine notes, aggregating \$350,000, which run to Christoffer Hannevig, Inc., were really notes held and made to it as the representative of said Christoffer Han-

nevig and taken by said Christoffer Hannevig, Inc., for said Christoffer Hannevig, and after execution thereof and prior to the 17th of September, 1917, the same were delivered by said Christoffer Hannevig, Inc., to said Christoffer Hannevig and were held by him individually continuously from 1917 until he delivered the same to the complainant in February, 1920, and that he was the real owner of the said notes."

Mr. James Baird Simpson, who was the confidential secretary of Hannevig (Rec., p. 438) makes an uncontradicted affidavit to the effect that the money advanced to the Pusey & Jones Company and represented by the notes to the order of Hannevig, Inc., was actually the money of Hannevig personally and advanced by him (Rec., pp. 412-3); that they were endorsed by Hannevig Inc., to Hannevig individually in 1917 and remained in his possession until February, 1920 (Rec., p. 445).

Furthermore, Hannevig deposited with Hannevig, Inc., (*i. e.*, his own banking house, Rec., p. 412), the \$750,000 which he had received from the Baltimore Dry Docks Company for the Pusey & Jones Company as the first payment on the purchase of its plant at Gloucester (Rec., p. 144, 412). No consideration was paid by Hannevig, Inc., for this deposit; and hence the Pusey & Jones Company has as much of a claim therefor against Hannevig, Inc., as against Hannevig himself.

Moreover, a court of equity is always capable of looking through the fiction of corporate entity whenever it is necessary to do so in order to prevent fraud and to effectuate justice. As said in *Quaid v. Ratkowski*, 183 A. D., 428 (affirmed 224 N. Y., 624), on the authority of a number of decisions by this Court (p. 432):

"While the courts of law strictly observe the fiction of corporate entity, there has been for years a growing indisposition to permit corporate entity to be employed either as an instrumentality or as a cloak for fraud or for successful evasion of the law. (*McCaskill Co. v. United States*, 216 U. S., 504; *Westinghouse Electric & Mfg. Co. v. Allis-Chalmers Co.*, 176 Fed. Rep., 362; *Linn & Lane Timber Co. v. United States*, 196 *id.*, 593; *United States v. Lehigh Valley R. R. Co.*, 220 U. S., 257, 271; *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 *id.*, 498, 523.)"

The important fact, therefore, appears that the misappropriation by Hannevig and his alter ego Hannevig, Inc., occurred on February 11, 1920 (Rec., pp. 375, 412), i. e., before Hannevig delivered these notes to Hanssen according to the alleged deposit agreement by which Hanssen claims to have received them (Rec., pp. 485, 489).

Hence the right of equitable set-off accrued as between the Pusey & Jones Company on the one hand, and Hannevig and Hannevig, Inc., on the other hand, *before* the transfer of these notes to Hanssen. At the time of that transfer neither Hannevig nor Hannevig, Inc., could have collected a nickel on those notes from the Pusey & Jones Company.

Furthermore, and equally important on the question of equitable set-off, is the fact that Hannevig and Hannevig, Inc., were at the time of the institution of this suit insolvent and adjudicated bankrupts (Rec., pp. 408, 437).

Consequently, since Hanssen claims that he is in equity because of having no adequate remedy at law (see his Brief, p. 45), he cannot deny the right of the Pusey & Jones Company to have its

cross-demand against Hannevig and Hannevig, Inc., considered as an equitable set-off in light of the fact that both Hannevig and Hannevig, Inc., were adjudicated bankrupts in February and March, 1921, respectively (Rec., pp. 408, 437).

Consequently, the defendant has in this equity suit a right of equitable set-off, for a variety of reasons:

(1) The notes had passed their maturity when Hanssen claims to have received them. His own alleged agreement with Hannevig shows that fact (Rec., p. 490); his brief concedes it (Rec., p. 52); his complaint asserts it (Rec., pp. 10-13); and such was the fact (Rec., pp. 369-371, 145).

(2) At the time of the alleged pledge of these notes with Hanssen on February 13th, 1920, Hannevig was in fact insolvent by reason of his misappropriation of the \$750,000 received for the Pusey & Jones Company from the Baltimore Drydocks Company, and the pledge with Hanssen was made with intent to prefer certain creditors, as the defendant was entitled to show under its answer (Rec., pp. 145-9).

(3) Both Hannevig and Hannevig, Inc., were not only insolvent but adjudicated bankrupts at the time of the commencement of this suit (Rec., pp. 408, 437).

(4) The cross-demand accrued before the notes were delivered to Hanssen.

(5) Hanssen is not the absolute transferee of these notes. He now only claims to be a pledgee. Ownership of the notes, subject to the pledge, is still in Hannevig (Rec., p. 489). In the instrument of pledge Hannevig admits liability to Hanssen's principals only for \$565,-

875; whereas the notes aggregate \$650,000, and the pledge is further secured by 7,200 shares of the preferred stock and 3,160 shares of the common stock of the Pusey & Jones Company. By a letter dated March 21, 1920, and never objected to by Hanssen, the exact amount of this indebtedness was apparently fixed at \$714,980 (Rec., pp. 458, 451). Hanssen is suing on these notes in the interest of Hannevig as well as of himself. If collected in full as a result of the suit, Hannevig may realize a large surplus either directly or indirectly by lifting the lien of the pledge from his stock. If the notes fail of collection, Hannevig's personal liability to Hanssen's principal for a deficiency will be increased accordingly.

The fundamental principle which the respondent has overlooked was thus stated by this Court in *Scott v. Armstrong*, 146 U. S., 499, 507:

"The right to assert set-off at law is of statutory creation, but courts of equity from a very early day were accustomed to grant relief in that regard independently as well as in aid of statutes upon the subject."

In accordance with this principle, the rule that at law the maker of negotiable paper can offset against the assignee of the payee only a cross-demand originating in the transaction out of which the paper itself issued, has no application where the assignee of the payee is suing in equity, the payee is insolvent, and the notes were overdue when transferred or the cross-demand originated before the transfer.

We have cited a number of cases to this effect on pages 52 and 53 of our main brief. Others may readily be multiplied:

In the Federal jurisdiction we cite *Schuler v.*

Israel, 120 U. S., 506, 510; and *Grant v. Fletcher*, 283 Fed., 243, 264.

In *Favorite v. Lord*, 35 Ill., 142, it was held (p. 149):

"But where the case is not within the statute, the defendant, who is the holder of the cross demand, may, in case of insolvency, have a setoff in equity. In such a proceeding he can have the cross demand fully adjusted, and the assignee of an overdue note from an insolvent takes it subject to this equity."

In *Wray's Administrators v. Furniss*, 27 Ala., 471, it was held that the maker of a negotiable note might set-off against the assignee thereof a cross-demand against the payee growing out of a collateral transaction where the payee was dead and his estate was insolvent. Indeed, this doctrine was applied even though the cross-demand was for unliquidated damages. To quote the opinion (p. 478):

"These damages are unliquidated, and could not, ordinarily, be the subject of set-off, either in a court of law or equity. But it is insisted in the case before us, that an equity attaches to have the set-off allowed by reason of the insolvency of Slatter's estate. . . . The equitable right of set-off is given by the insolvency of Slatter's estate. But for this, so far as regards the demand held by Furniss, which is independent of the demand accruing upon the breach of the warranty, there would exist no equitable right of set-off."

In *Indiana Novelty Mfg. Co.*, 15 Ind., App. 1, it was held (to quote the headnote):

"In an action on a note given in payment of stock in a private corporation, by the assignee of the note, the note having been assigned as

collateral security for a debt past due and unpaid, and the assignor having become insolvent, the maker of the note, who is a stockholder and officer of the assignor company, has the right to set up a counterclaim or set-off as a defense to the note, an obligation running from him to the assignor."

In *Dubreuil v. Gaither*, 98 Md., 541, the receiver of a bank filed a bill in equity alleging that a sum of money deposited in the bank in the name of a certain person as trustee, was really owned by parties who were indebted to the bank; that the trustee had brought suit against the receiver and had recovered a judgment for the amount of the deposit because the court of law had refused to allow the claim of the bank against the real owners of deposit to be used as a set-off. The bill prayed that this set-off be established in equity and that the execution of the judgment be restrained. The Court granted the relief prayed, and said (p. 541):

"Equity in allowing set-off will usually observe the same principles as courts of law, but it is not limited by the technical rules which restrain those tribunals in dealing with this statutory defense. It exercises an original jurisdiction over the subject and will, when reason and justice require it, enforce a counterclaim though not within the letter of the statute." *Colton v. Drover's Bldg. Assn.*, *supra* (90 Md., 93); *Levy v. Steinbach*, 43 Md., 203; *Manning v. Thruston*, 59 Md., 228; *Smith v. Donnell*, 9 Gill., 84. One of the grounds most frequently held by courts of equity to be sufficient to induce them to allow a set-off is the insolvency of the party against whom it is claimed. *Marshall v. Cooper*, 43 Md., 60; *Smith v. Donnell*, 9 Gill., 89; *Scott v. Scott*, 17

Md., 91. That ground exists in the present case according to the undenied allegations of the bill."

In *Baker v. Kinsey*, 41 Ohio St., 403, it was held (to quote the headnote) :

"The maker of a separate note, in suit, who holds an overdue joint note made by the plaintiff and another who are both insolvent, may, in equity, set-off the joint demand. The holder of a promissory note who took it after maturity holds it subject to every objection, including equitable set-off, to which it was subject in the hands of his assignor."

To the same effect are :

Sanborn v. Little, 3 N. H., 539;

Merchants' Exchange Bank v. Fuldner, 92 Wis., 415;

Wilbur v. Jeep, 37 Nebr., 604;

McKenna v. Kirkwood, 50 Mich., 544;

Craighead v. Swartz, 219 Pa. St., 149, 151.

The same principle obtains in Delaware. In *Burten v. Willen*, 6 Del. Ch., 429, it was said (p. 429) :

"Courts of equity will sometimes allow a set-off on account of insolvency, when otherwise they would not interfere."

The cases cited in the respondent's brief at pages 54 and 55 have no application. They were suits *at law*. At law the right of set-off is not recognized at all, except as conferred by statute.

III.

Another and equally well-settled principle leads to the same result.

These notes, when passed to Hanssen, had not only passed their maturity, *but they had lost their negotiability.*

As early as 1917, there had been endorsed on each of these notes, as appears on the face of the copies annexed to the bill of complaint, the words,

"Extended according to letter dated September 18, 1917, to U. S. Shipping Board Emergency Fleet Corporation.

(Signed) CHRISTOFFER HANNEVIG, INC.

FINN HANNEVIG,

Vice-President."

The note for \$300,000 to the order of Christoffer Hannevig individually was similarly annotated (Rec., pp. 41, 2). Under each annotation the endorsement in blank of the payee appears (Rec., pp. 33-41).

The letter thus referred to appears at page 370 and constituted an agreement between the Pusey & Jones Company, the Shipping Board and Hannevig, that the maturity of these notes be postponed until the completion of certain vessels. It also contains financial arrangements other than the mere extension of the notes.

If the special undertakings contained in this letter had been incorporated in the original notes when made, they would not even then have been negotiable paper: (1) because an instrument which contains an order or promise in addition to the payment of money is not negotiable; and (2) because an instrument is not negotiable which is payable neither on demand nor at a determinable future time. In the present case, the contingencies expressed in this letter were uncertain and might never happen. (*Nunez v. Dautel*, 19 Wall., 560, 562.)

The incorporation of such a special contract and contingency into these notes after their making, destroyed their negotiability from that time.

Cedar Rapids Nat. Bank *v.* Weber, 164

N. W., 223; L. R. Ann, 1918 A, p. 432;

Palmer *v.* Bank of Graeinger, 130 Iowa, 469;

Citizens National Bank *v.* Piolet, 126 Pa., 194;

Second National Bank *v.* Wheeler, 75 Mich., 546;

First National Bank *v.* Carson, 60 Mich., 432;

Miller *v.* Poage, 56 Iowa, 96.

Consequently, since the notes were not negotiable when Hanssen received them, and since Hannevig and Hannevig, Inc., went into bankruptcy before the institution of this suit, the defendant may in equity set-off its claim against Hanssen. Particularly would this be true, should the defendant succeed in showing that when Hanssen received the notes Hannevig was even then insolvent.

In 31 *Cyc.*, the rule is stated (p. 751) :

"As a general rule an equitable right of set-off is not defeated by assignment of the debt.
* * * The insolvency of the assignor at the time of assignment is good ground in equity to authorize a set-off against the assignee of claims against the assignor at the time of assignment. * * * In equity, upon proof of the non-residence or insolvency of the assignor at the time of the assignment, it has been held that even an liquidated claim sounding in tort may be set-off against the assignee.

To the same effect is

Hamilton v. Grangers Life & Health Ins. Co., 65 Georgia, 750.

IV.

The claim on page 59 of the respondent's brief that Hannevig is none the less a creditor because he undertook not to collect the notes until the Shipping Board mortgage was paid, is fallacious.

The reason given is that proof of such an agreement would "contradict the written contract by mere parole." But in the present case this agreement was not made until May 18th, 1918 (Rec., pp. 228, 209), *i. e.*, until a year after the making of the notes. Hence, the parole evidence rule had no application.

Dated, New York, February 26th, 1923.

Respectfully submitted,

LINDLEY M. GARRISON,
CHARLES H. TUTTLE,
SELDEN BACON,
SAUL S. MYERS,

Of Counsel.

Argument for Respondent.

THE PUSEY & JONES COMPANY v. HANSSEN.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT.

No. 431. Argued February 27, 1923.—Decided April 9, 1923.

1. In the absence of a statute, a suit for a receiver of an insolvent corporation cannot be maintained in the District Court by an unsecured simple contract creditor. P. 497.
 2. A remedial right to proceed in a federal court in equity cannot be enlarged by a state statute. P. 497.
 3. Section 3883 of the Revised Code of Delaware, 1915, empowering the Chancellor to appoint a receiver for an insolvent corporation, "on the application and for the benefit of any creditor," etc., does not confer upon the creditor a substantive right but merely provides a new remedy, which cannot affect proceedings of the federal courts in equity. P. 498.
 4. A decree confirming and continuing a receivership of a corporation, entered without equity jurisdiction on the application of a simple unsecured contract creditor, could not be cured by the mere intervention afterwards of another party claiming to be a creditor with a mortgage lien on the corporation's property. P. 501.
- 279 Fed. 488, reversed.

CERTIORARI to a decree of the Circuit Court of Appeals affirming a decree of the District Court confirming and continuing a receivership.

Mr. Lindley M. Garrison, with whom *Mr. Charles H. Tuttle*, *Mr. Selden Bacon* and *Mr. Saul S. Myers* were on the briefs, for petitioner.

Mr. William H. Button, with whom *Mr. John P. Nields* and *Mr. Wm. G. Mahaffy* were on the brief, for respondent.

The Delaware statute justifies the procedure herein and the action of the court below.

The appointment of the receivers was well within the discretion of the District Court.

The question of the jurisdiction of a federal court to proceed under the Delaware statute at the instance of a creditor who has not reduced his claim to judgment is not determinative of this proceeding, for two reasons: (1) The respondent was a stockholder, as well as a creditor, and, as such, could proceed unhampered by any of the obstacles urged by the petitioner; (2) the intervention of the United States Shipping Board Emergency Fleet Corporation injected a party that had a direct lien upon all of the valuable real estate owned by the petitioner.

It is claimed that the proceedings were so defective that they could not be perfected by a subsequent intervention. But the lower court had full jurisdiction over the original parties and over the subject-matter of the proceeding, any defect arising from the fact that the complainant had not reduced his claim to judgment being one that could be waived. And the proceeding was legitimately in court, if for no other purpose than that of enforcing the transfer of the preferred stock to the complainant's name. The petitioner's contention in this behalf seems to be in effect that there was no proceeding and therefore none in which the Emergency Fleet Corporation could intervene. This is not the situation for the above reasons, if for no others.

Furthermore, it is not true that a defect of jurisdiction arising from the lack of capacity of a party may not be cured by the intervention of a party properly qualified. This was a class action, brought for the benefit of all stockholders and creditors. If the original complainant cannot qualify, the proceedings are perfected by the intervention of one of the prescribed class who can qualify. *Hanna v. Lyon*, 179 N. Y. 107.

The federal court has jurisdiction in equity to appoint a receiver under the Delaware statute at the instance of a simple contract creditor. *Ex parte McNiel*, 13 Wall. 236; *Davis v. Gray*, 16 Wall. 203; *Case of Broderick's*

Will, 21 Wall. 503; *Louisville & Nashville R. R. Co. v. Western Union Tel. Co.*, 234 U. S. 369; *Greeley v. Lowe*, 155 U. S. 58. The only inquiry here is whether this statute creates a new right or remedy, equitable in character, applicable to a situation for which there was no adequate and complete legal remedy.

The statute creates a new right, namely, the right to a receivership solely upon the insolvency of a corporation. *Jones v. Mutual Fidelity Co.*, 123 Fed. 506.

The right to a receivership is a substantial right and oftentimes constitutes the only means of saving both the creditors and stockholders immense values in the possession of insolvent corporations. The argument that no such relief is permissible as the only and ultimate relief prayed for in a proceeding, is sufficiently answered by reference to the many cases in the federal courts in which that relief only has been requested and granted. The right is, of course, equitable. *Hollins v. Brierfield Coal & Iron Co.*, 150 U. S. 371; *Williamson v. Wilson*, 1 Bland's Ch. (Md.) 418.

The District Court in the District of Delaware has proceeded for many years upon the above principles in the enforcement of this statute. *Wheeler v. Walton & Whann Co.*, 64 Fed. 664; *Maxwell v. Wilmington Dental Mfg. Co.*, 82 Fed. 214; *Jones v. Mutual Fidelity Co.*, 123 Fed. 506; *Hitner v. Diamond State Steel Co.*, 176 Fed. 384; *Adler v. Campeche Laguna Corporation*, 257 Fed. 789; *Spackman v. Swan Creek Co.*, 274 Fed. 107; *Hanssen v. Pusey & Jones Co.*, 276 Fed. 296.

Many of the Circuit Courts of Appeals have upheld similar statutes. *Darragh v. Wetter Mfg. Co.*, 78 Fed. 7; *McGraw v. Mott*, 179 Fed. 646; *Land Title & Trust Co. v. Asphalt Co.*, 127 Fed. 1; *Kessler v. William Necker, Inc.*, 258 Fed. 654; *Lion Bonding & Surety Co. v. Karatz*, 280 Fed. 532.

United States v. Sloan Ship Yards Corporation, 270 Fed. 613; *Davidson-Wesson Implement Co. v. Parlin & Orendorff Co.*, 141 Fed. 37; *Jacobs v. Mexican Sugar Co.*, 130 Fed. 589; *Harrison v. Farmers' Loan & Trust Co.*, 94 Fed. 728; *Tompkins Co. v. Catawba Mills*, 82 Fed. 780; *Morrow Shoe Co. v. New England Shoe Co.*, 57 Fed. 685; *Atlanta & Florida R. R. Co. v. Western Ry. Co.*, 50 Fed. 790; *Mathews Slate Co. v. Mathews*, 148 Fed. 490, distinguished.

A review of these cases, relied upon by the petitioner, shows that they add nothing to the discussion. Those that apply at all simply rely upon the cases of *Scott v. Neely*, 140 U. S. 106; *Cates v. Allen*, 149 U. S. 451; and *Hollins v. Brierfield Coal & Iron Co.*, 150 U. S. 371, which do not govern this question.

The complainant had no adequate remedy at law and the decision affording him relief was correct.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

Section 3883 of the Revised Code of Delaware, 1915 (which embodies the Act of March 25, 1891, c. 181, 19 Del. Laws, p. 359) provides:

"Whenever a corporation shall be insolvent, the Chancellor, on the application and for the benefit of any creditor or stockholder thereof, may, at any time, in his discretion, appoint one or more persons to be receivers of and for such corporation, to take charge of the estate, effects, business and affairs thereof, and to collect the outstanding debts, claims, and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by such corporation and may be necessary and proper; the powers of such receivers to be such and continued so long as the Chan-

cellor shall think necessary; provided, however, that the provisions of this Section shall not apply to corporations for public improvement."

Whether the federal court sitting in equity has, by reason of the above statute, jurisdiction to appoint a receiver of an insolvent Delaware corporation upon application of an unsecured simple contract creditor is the main question presented.¹

Invoking the power conferred by the statute, Hanssen, a subject of Norway, brought in the federal court for the District of Delaware this suit in equity against The Pusey & Jones Company, a corporation organized under the general laws of that State. The bill, which was prosecuted on behalf of all creditors and stockholders, alleged that the corporation was insolvent; that plaintiff was a creditor, holding promissory notes issued by it; and that he was also a stockholder. It prayed that a receiver be

¹ It will be assumed that the words "any creditor" as used in the statute include an unsecured simple contract creditor. It was so held by the District Court and by the Circuit Court of Appeals in this case, 276 Fed. 296; 279 Fed. 488; and it had been previously so held in the District Court. *Jones v. Mutual Fidelity Co.*, 123 Fed. 506. The question, which is one of construction, does not appear to have been expressly decided by the courts of Delaware. The reported cases do not disclose that it has been raised in the state courts. In those cases in which jurisdiction was taken, the plaintiff was apparently a stockholder, *Thoroughgood v. Georgetown Water Co.*, 9 Del. Ch. 84; *Ross v. South Delaware Gas Co.*, 10 Del. Ch. 236; *Sill v. Kentucky Coal & Timber Development Co.*, 11 Del. Ch. 93; *Hopper v. Fesler Sales Co.*, 11 Del. Ch. 209; *Badenhausen Co. v. Kidwell*, 107 Atl. (Del.) 297; see also *Du Pont v. Standard Arms Co.*, 9 Del. Ch. 315; *Mark v. American Brick Manufacturing Co.*, 10 Del. Ch. 58; *In re D. Ross & Son, Inc.*, 10 Del. Ch. 434; *Fell v. Securities Company of North America*, 11 Del. Ch. 101; *Whitmer v. Wm. Whitmer & Sons, Inc.*, 11 Del. Ch. 185; *Jones v. Maxwell Motor Co.*, 115 Atl. (Del.) 312; *Wheeler v. Walton & Whann Co.*, 64 Fed. 664; *Maxwell v. Wilmington Dental Mfg. Co.*, 82 Fed. 214; *Hitner v. Diamond State Steel Co.*, 176 Fed. 384; *Adler v. Campeche Laguna Corporation*, 257 Fed. 789.

appointed.² The bill was filed on June 9, 1921; receivers were appointed *ex parte*; and an order issued that the defendant show cause, on June 18, why the receivers should not be continued during the pendency of the cause. On June 11, the defendant moved to vacate the receivership. The motion was denied. Then, by answer, the defendant objected that the court had no jurisdiction either at law or in equity; denied that plaintiff was either a creditor or a stockholder; denied that defendant was insolvent; and asserted that defendant was entitled under the Federal Constitution to have determined in an action at law the question whether plaintiff was a creditor.

Upon a hearing of the order to show cause, had on bill, answer, affidavits and exhibits, a decree was entered confirming the appointment of the receivers and continuing them *pendente lite*, 276 Fed. 296. This decree was affirmed by the Circuit Court of Appeals for the Third Circuit, 279 Fed. 488. Neither the District Court, nor the Circuit Court of Appeals, passed upon the question whether Hanssen was a stockholder. Both courts held that, by reason of the state statute, the federal court sitting in equity had jurisdiction and power to appoint a receiver of a Delaware corporation upon application of a simple contract creditor, whose claim had not been reduced to judgment and who had no lien upon the corporate property. Both courts held that the controverted question whether the plaintiff was a creditor could be determined in the equity suit. And both held (upon the evidence submitted by affidavit) that the plaintiff was a creditor. The case is here on writ of certiorari.

² It prayed, also, that the defendant be directed to issue to plaintiff a certificate for the stock which he claimed to own; and that the receiver be directed to institute appropriate proceedings to set aside a large judgment recently entered against defendant in that court, which was alleged to have been recovered collusively. The answer denied the collusion.

That this suit could not be maintained in the absence of the statute is clear. A receiver is often appointed upon application of a secured creditor who fears that his security will be wasted. *Kountze v. Omaha Hotel Co.*, 107 U. S. 378, 395. A receiver is often appointed upon application of a judgment creditor who has exhausted his legal remedy. See *White v. Ewing*, 159 U. S. 36. But an unsecured simple contract creditor has, in the absence of statute, no substantive right, legal or equitable, in or to the property of his debtor. This is true, whatever the nature of the property; and, although the debtor is a corporation and insolvent. The only substantive right of a simple contract creditor is to have his debt paid in due course. His adjective right is, ordinarily, at law. He has no right whatsoever in equity until he has exhausted his legal remedy. After execution upon a judgment recovered at law has been returned unsatisfied he may proceed in equity by a creditor's bill. *Hollins v. Brierfield Coal & Iron Co.*, 150 U. S. 371; Compare *Swan Land & Cattle Co. v. Frank*, 148 U. S. 603; *National Tube Works Co. v. Ballou*, 146 U. S. 517; *Pierce v. United States*, 255 U. S. 398, 403. He may, by such a bill, remove any obstacle to satisfying his execution at law; or may reach assets equitable in their nature; or he may provisionally protect his debtor's property from misappropriation or waste, by means either of an injunction or a receiver. Whether the debtor be an individual or a corporation, the appointment of a receiver is merely an ancillary and incidental remedy. A receivership is not final relief. The appointment determines no substantive right; nor is it a step in the determination of such a right. It is a means of preserving property which may ultimately be applied toward the satisfaction of substantive rights.

That a remedial right to proceed in a federal court sitting in equity cannot be enlarged by a state statute is likewise clear, *Scott v. Neely*, 140 U. S. 106; *Cates v. Allen*,

149 U. S. 451. Nor can it be so narrowed, *Mississippi Mills v. Cohn*, 150 U. S. 202; *Guffey v. Smith*, 237 U. S. 101, 114. The federal court may therefore be obliged to deny an equitable remedy which the plaintiff might have secured in a state court.³ Hanssen's contention is that the statute does not enlarge the equitable jurisdiction or remedies; and that it confers upon creditors of a Delaware corporation, if the company is insolvent, a substantive equitable right to have a receiver appointed. If this were true, the right conferred could be enforced in the federal courts, *Scott v. Neely*, 140 U. S. 106, 109; ⁴ since the proceeding is in pleading and practice conformable to those commonly entertained by a court of equity. But it is not true that this statute confers upon the creditor a substantive right.⁵ The Bankruptcy Act of July 1, 1898, c. 541, §§ 3, 18, 30 Stat. 544, 546, 551, does confer upon

³ The oft-quoted statement in *Davis v. Gray*, 16 Wall. 203, 221: "A party by going into a National court does not lose any right or appropriate remedy of which he might have availed himself in the State courts of the same locality", must be taken with this qualification. See also *Ex parte McNiel*, 13 Wall. 236, 243; *Case of Broderick's Will*, 21 Wall. 503, 520.

⁴ See also *Brine v. Insurance Co.*, 96 U. S. 627, 639; *Gormley v. Clark*, 134 U. S. 338, 348; *Bardon v. Land & River Improvement Co.*, 157 U. S. 327, 330; *Cowley v. Northern Pacific R. R. Co.*, 159 U. S. 569, 582; *Lawson v. United States Mining Co.*, 207 U. S. 1, 9; *Grether v. Wright*, 75 Fed. 742, 746.

⁵ The same contention was made in the lower federal courts in cases brought under similar statutes enacted in other States. In some of these cases the court took jurisdiction under varying conditions. *Darragh v. Wetter Mfg. Co.*, 78 Fed. 7; *Land Title & Trust Co. v. Asphalt Co.*, 127 Fed. 1; *McGraw v. Mott*, 179 Fed. 646; *Kessler v. William Necker, Inc.*, 258 Fed. 654. In others it refused to do so. *Atlanta & Florida R. R. Co. v. Western Ry. Co.*, 50 Fed. 790, 794; *Morrow Shoe Mfg. Co. v. New England Shoe Co.*, 60 Fed. 341; *Harrison v. Farmers' Loan & Trust Co.*, 94 Fed. 728; *Davidson-Wesson Implement Co. v. Parlin & Orendorff Co.*, 141 Fed. 37. Compare *Mathews Slate Co. v. Mathews*, 148 Fed. 490.

creditors of a corporation (or individual) the right, under certain conditions, to have the property of an insolvent debtor taken possession of and administered by an officer of the court. Compare *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U. S. 300, 309, 310; *Vulcan Sheet Metal Co. v. North Platte Valley Irrigation Co.*, 220 Fed. 106. The Delaware statute does not confer upon creditors the right to have a receiver appointed, although the insolvency of the corporation may be palpable, hopeless and attended by indisputable fraud or mismanagement. Insolvency is made a condition of the Chancellor's jurisdiction; but it does not give rise to any substantive right in the creditor. *Jones v. Maxwell Motor Co.*, 115 Atl. (Del.) 312, 314, 315. It makes possible a new remedy because it confers upon the Chancellor a new power. Whether that power is visitatorial, (as the petitioner insists) or whether it is strictly judicial, need not be determined in this case. Whatever its exact nature, the power enables the Chancellor to afford a remedy which theretofore would not have been open to an unsecured simple contract creditor. But because that which the statute confers is merely a remedy, the statute cannot affect proceedings in the federal courts sitting in equity.

The case is wholly unlike *Louisville & Nashville R. R. Co. v. Western Union Telegraph Co.*, 234 U. S. 369; and other cases in which federal courts, because of a state statute, entertained suits to remove a cloud upon title, which otherwise must have been dismissed. In those cases, as pointed out in *Clark v. Smith*, 13 Pet. 195, 203, the statute changed a rule of substantive law. For instance, a statute provides that a deed, void on its face, shall be deemed a cloud, whereas theretofore it was not. It declares "what shall form a cloud on titles." As stated in *Reynolds v. Crawfordsville First National Bank*, 112 U. S. 405, 410, the federal court looks "to the legislation of the State in which the court sits [and the land is situated] to ascer-

tain what constitutes a cloud upon the title, and what the state laws declare to be such the courts of the United States sitting in equity have jurisdiction to remove." In such cases, as the statute confers upon the landowner a substantive right, he is entitled to the aid of the federal court for its enforcement. But where a state statute relating to clouds upon title is held merely to enlarge the equitable remedy, it will not support a bill in equity in the federal court. Thus, in *Whitehead v. Shattuck*, 138 U. S. 146, the statute relied upon authorized a suit in equity by one out of possession against one in possession. As an action at law in the nature of ejectment afforded an adequate legal remedy, the bill to quiet title was dismissed.

The case at bar is also unlike *Re Metropolitan Railway Receivership*, 208 U. S. 90, 109, 110, and many others, in which there was express consent by the corporation to the appointment of the receiver, or where the indebtedness to plaintiff and the corporation's insolvency were admitted, or the lack of jurisdiction in equity was waived. The objection that the bill does not make a case properly cognizable in a court of equity does not go to its jurisdiction as a federal court. *Smith v. McKay*, 161 U. S. 355; *Blythe v. Hinckley*, 173 U. S. 501. The objection may, as pointed out in *Reynes v. Dumont*, 130 U. S. 354, 395, be taken by the court of its own motion. But, unlike lack of jurisdiction as a federal court, *Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan*, 111 U. S. 379, 382, lack of equity jurisdiction (if not objected to by a defendant) may be ignored by the court, in cases where the subject-matter of the suit is of a class of which a court of equity has jurisdiction. And where the defendant has expressly consented to action by the court or has failed to object seasonably, the objection will be treated as waived. *Brown v. Lake Superior Iron Co.*, 134 U. S. 530, 535, 536; *Southern Pacific R. R. Co. v. United States (No. 1)*, 200

U. S. 341, 349. In cases relied upon by respondent there was such waiver. But, here, the company strenuously insisted throughout upon the absence of jurisdiction and denied every material allegation on which it is sought to support the bill.

Respondent contends that, even if there was originally lack of equity jurisdiction, the defect was cured on October 8, 1921, when the intervention of the United States Shipping Board Emergency Fleet Corporation was filed and allowed. That corporation claimed to be a creditor and to have a mortgage lien on all the real estate of The Pusey & Jones Company. The contention is that the original defect in jurisdiction was thus cured, because the existence of a direct lien gives equity jurisdiction for the appointment of receivers, unhampered by the obstacles that confront unsecured simple contract creditors. The contention is clearly unsound; among other reasons, because the intervention did not occur until two months after entry of the decree here under review.

Respondent contends, also, that even if there was no jurisdiction of the suit as a creditor's bill, it should be sustained now as a stockholder's bill. The answer denied that Hanssen was or ever had been a stockholder; denied that any certificate of stock ever had been assigned or transferred to him; denied that any certificate ever became his property; and denied that he was the holder or owner of any stock. The bill prayed that the corporation be directed to issue to plaintiff a certificate for the stock which he claims to own. Both the District Court and the Circuit Court of Appeals left undetermined this claim that he was or should be made a stockholder. We do not decide it. And we have no occasion to consider whether the bill could be sustained, if Hanssen proved to be a stockholder.

Reversed.

MR. JUSTICE MCKENNA and MR. JUSTICE SUTHERLAND dissent.